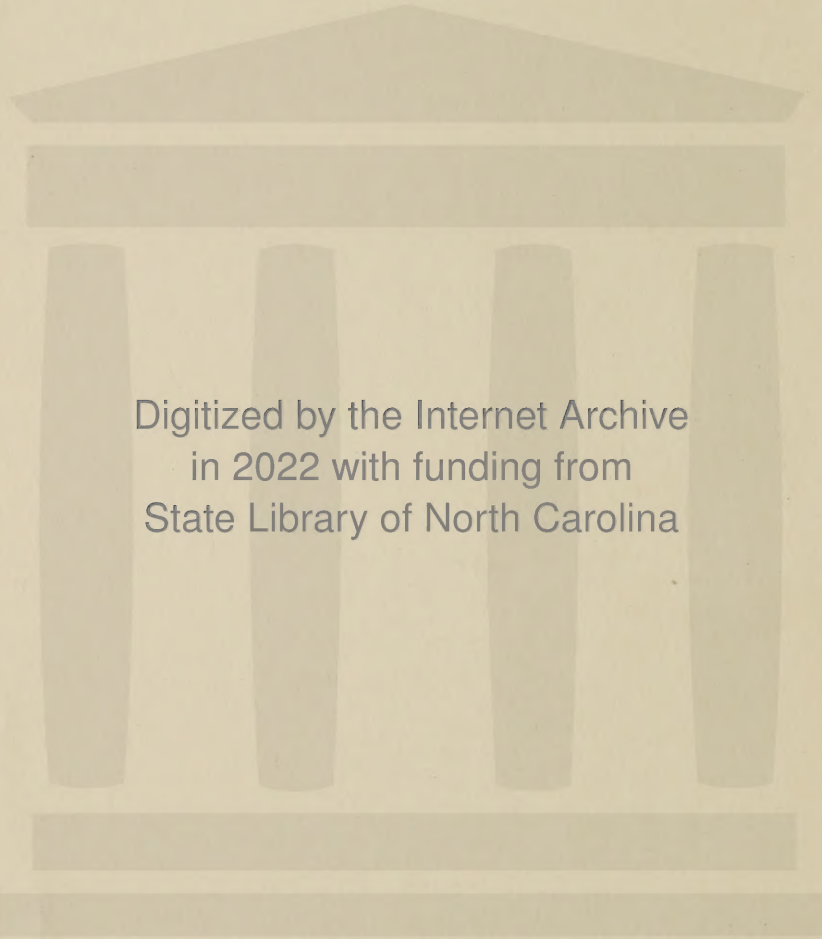


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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through
the Legislative Session of 1951

PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

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AND BEIRNE STEDMAN

Volume 3A

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1952

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Scope of Volume

Statutes:

Full text of Chapters 106 through 116 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1951 heretofore contained in Volume 3 of the General Statutes of North Carolina and the 1951 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-233 (p. 312).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-186 (p. 744).
Federal Supplement volumes 1-95 (p. 248).
United States Reports volumes 1-340 (p. 366).
Supreme Court Reporter volumes 1-71 (p. 473).
North Carolina Law Review volumes 1-29 (p. 226).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R. Potter's Revisal (1821, 1827)
R. S. Revised Statutes (1837)
R. C. Revised Code (1854)
C. C. P. Code of Civil Procedure (1868)
Code Code (1883)
Rev. Revisal of 1905
C. S. Consolidated Statutes (1919, 1924)

Preface

Volume 3 of the General Statutes of North Carolina of 1943 has been replaced by recompiled volumes 3A, 3B and 3C. These new volumes contain Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. Chapters 106 through 116 appear in volume 3A, Chapters 117 through 150 in volume 3B, and Chapters 151 through 166 in volume 3C.

Both the statutes and the annotations in the recompiled volumes are in larger type and in more convenient form than in the original volume. The annotations in the new volumes comprise those which appeared in original volume 3 and the 1951 Cumulative Supplement thereto; however, they have been considerably revised, and it is believed that the present annotations are an improvement over the old.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

The recompiled volumes have been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

HARRY McMULLAN,
Attorney General.

January 31, 1952.

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ARTICLE 1.*Department of Agriculture.***Part 1. Board of Agriculture.**

§ 106-1. **Constitutional provision.**—The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep husbandry. (Const., Art. III, s. 17; Rev., s. 3930; C. S., s. 4666.)

This section is identical with the constitutional provision, Art. III, sec. 17, which is not self-executing, but simply directs the legislature to establish the Department of Agriculture, Immigration, and Statis-

tics. *Cunningham v. Sprinkle*, 124 N. C. 638, 33 S. E. 138 (1899).

Cited in *Nantahala Power, etc., Co. v. Clay County*, 213 N. C. 698, 197 S. E. 603 (1938).

§ 106-2. **Department of Agriculture, Immigration, and Statistics established; Board of Agriculture, membership, terms of office, etc.**—The Department of Agriculture, Immigration, and Statistics is created and established and shall be under the control of the Commissioner of Agriculture, with the con-

sent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of ten other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultry man to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interest, one who shall be a man experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession. (Code, s. 2184; 1901, c. 479, ss. 2, 4; Rev., s. 3931; 1907, c. 497, s. 1; C. S., s. 4667; 1931, c. 360, s. 1; 1937, c. 174.)

Editor's Note. — The 1931 and 1937 amendments rewrote this section.

Sprinkle, 124 N. C. 638, 33 S. E. 138 (1899).

Appointment of Members.—Members of the State Board of Agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment. They are not exclusively, nor of necessity, within the power of executive appointment. *Cunningham v.*

Actions against Board.—The Board of Agriculture is a department of the State government and an action cannot be maintained against it without the consent of the State. *Chemical Co. v. Board of Agriculture*, 111 N. C. 135, 15 S. E. 1032 (1892).

§ 106-3. Compensation of members.—Each member of the Board of Agriculture shall receive compensation for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his residence. He shall also receive necessary traveling expenses for the distance to and from Raleigh. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem rate and mileage as is fixed for attending meetings of the Board. (1901, c. 479, s. 3; Rev., s. 3932; 1919, c. 247, s. 10½; C. S., s. 4668.)

Cross Reference.—See current appropriations act for per diem rate.

§ 106-4. Meetings of Board.—The Board of Agriculture, herein established, hereafter called "the Board," shall meet for the transaction of business in the city of Raleigh at least twice a year, and oftener, if called by the Commissioner of Agriculture. (1901, c. 479, s. 3; Rev., s. 3935; C. S., s. 4669; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2.)

Editor's Note. — This section formerly set the specific date for one of the meetings on the second Wednesday in December.

The 1931 amendment made no mention of any specific date.

§ **106-5. Executive committee and finance committee.**—The Board shall elect from its numbers an executive committee of four, of which committee the Commissioner shall also be ex officio a member and chairman. The Board shall elect a finance committee of five from its numbers. The Board shall prescribe the powers and duties of these committees, and the Commissioner may call meetings of these committees whenever in his opinion such meetings are desirable for the good of the Department. (Rev., s. 3936; 1907, c. 876, s. 1; C. S., s. 4670.)

§ **106-6. Moneys received to be paid into State treasury.**—All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cottonseed meal and concentrated commercial feeding stuff, and from the sale of any property seized and condemned under the provisions of this chapter, and all other moneys which may come into the hands of the Commissioner of Agriculture or other officer, member or employee of the Department of Agriculture by virtue of this chapter, shall be paid into the State treasury by the Commissioner of Agriculture, and shall be kept on a separate account by the Treasurer as a fund for the exclusive use and benefit of the Department of Agriculture. (1876-7, c. 174, s. 22; Code, s. 2208; Rev., s. 3937; C. S., s. 4671.)

§ **106-7. Power of Board.**—The Board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the Department. (1901, c. 479, s. 3; Rev., s. 3933; C. S., s. 4672.)

§ **106-8. May require bonds of officers.**—Bonds may be required for such amounts as the Board may think best for all officers of the Department who handle funds. (1901, c. 479, s. 14; Rev., s. 3934; C. S., s. 4673.)

§ **106-9. Annual report.**—The Board shall annually make a report to the Governor, to be transmitted by him to the General Assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended. (1907, c. 876, s. 2; C. S., s. 4674.)

§ **106-9.1. Investment of surplus in agriculture fund in interest bearing government securities.**—The Board of Agriculture, with the approval of the Governor and Council of State, is hereby authorized and empowered whenever in their discretion there is a cash surplus in the agriculture fund in excess of the amount required to meet the current needs and demands of the Department, to invest said surplus funds in bonds or certificates of indebtedness of the United States of America or bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina. The said funds shall be invested in such obligations as in the judgment of the Board of Agriculture, the Governor, and the Council of State may be readily converted into money. The interest and revenue received from such investment or profits realized from the sale thereof shall become a part of the agriculture fund and be likewise invested. (1945, c. 999.)

Part. 2. Commissioner of Agriculture.

§ **106-10. Election; term; vacancy.**—The Commissioner of Agriculture shall be elected at the general election for other State officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such Commissioner shall be filled by the Governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (1901, c. 479, s. 4; Rev., s. 3938; C. S., s. 4675.)

§ 106-11. Salary of Commissioner of Agriculture.—The salary of the Commissioner of Agriculture shall be seven thousand and five hundred dollars (\$7,500.00) a year, payable monthly: Provided that, from and after the expiration of the present term of office, the salary shall be nine thousand dollars (\$9,000.00) per year, payable in equal monthly installments. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278.)

Editor's Note. — The various amendments increased the salary, the 1949 amendment adding the proviso.

§ 106-12. To appoint secretary and other officials.—The Commissioner of Agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the Department of Agriculture. He shall, subject to the approval of a majority of the Board, appoint heads of divisions and their assistants. (1901, c. 479, s. 4; Rev., s. 3939; 1913, c. 202; C. S., s. 4676.)

§ 106-13. To investigate purchases, sources, and manufacture of fertilizer.—The Commissioner of Agriculture shall investigate all complaints made by purchasers of fertilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fishscrap, nitrate of soda, cottonseed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and to publish the same in The Bulletin; but he shall not expose to the public the name of any manufacturer in this State who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this State: Provided, such corporation or company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price-list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary. (1901, c. 479, s. 4; Rev., s. 3940; C. S., s. 4677.)

§ 106-14. To establish regulations for transportation of livestock.—The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§ 106-15. Agricultural Experiment Station and branch stations.—The work of investigation in agriculture required in this chapter may be designated by the Board of Agriculture as an Agricultural Experiment Station, and the four test farms now in operation be and the same are hereby designated and established as branch experiment stations, to be conducted as at present under the auspices of the Board of Agriculture and out of its funds. (1907, c. 876, s. 5; C. S., s. 4682.)

Cross Reference.—For another section relating to control of experiment station, see § 116-32.

§ 106-16. **Sale and conveyance of test farms; use of proceeds.**—The Board of Agriculture is hereby authorized and empowered to sell at the discretion of said Board any land or lands which may be conveyed to the State or the Department of Agriculture for the purpose of conducting "test farms"; and a deed, signed by the Commissioner of Agriculture and attested by the secretary of the Board of Agriculture in the name of the State and the Board of Agriculture, shall be sufficient to convey title to the purchaser or purchasers. The proceeds of any sale may be used by the Board of Agriculture in the work of the Department, except so much of said money as may be necessary to reimburse anyone who has contributed to the purchase money. This amount shall be returned to the contributors. (1909, c. 97; 1917, c. 45; C. S., s. 4683.)

§ 106-17. **Acquisition of test farm.**—The Department of Agriculture is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than one hundred acres in the sandhill section of North Carolina, and in northeastern North Carolina composed of the counties of Camden, Chowan, Currituck, Gates, Pasquotank and Perquimans, to be developed and used as a "test farm" for the purposes of work in investigation in agriculture.

Such "test farm" when acquired and established shall be operated, managed and controlled as other "test farms" in the State. (1927, c. 182, ss. 1, 2.)

§ 106-18. **Peanut test farm.**—The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a test farm in some suitable place in the peanut section of eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said test farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut test farm as may be necessary for its proper conduct and in the same way as is now being done for the other test farms in the State. The test farm shall be established, operated and controlled by the Department of Agriculture as the other test farms for the study of other farm crops. (1937, c. 218.)

§ 106-19. **State Chemist; duties of office.**—The Department of Agriculture shall employ an analyst or State Chemist, skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the State Chemist to analyze such fertilizers and products as may be required by this Department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the Department, analyze for citizens of the State such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the Department of benefit to the development of the material interest of the State, when such samples are supplied under rules by the Department, and he shall carry on such other investigations as the Department may direct. He shall make regular reports to the Department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same. (1901, c. 479, s. 11; Rev., s. 3941; C. S., s. 4684.)

§ 106-20. **Inoculating culture for leguminous crops.**—The Board of Agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the State applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the Department of Agriculture. (Ex. Sess. 1913, c. 43; C. S., s. 4685.)

§ 106-21. **Timber conditions to be investigated and reported.**—The Department of Agriculture shall investigate and report upon the conditions of

the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same. (1901, c. 479, s. 13; Rev., s. 3942; C. S., s. 4686.)

§ 106-22. Joint duties of Commissioner and Board.—The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall:

1. General.—Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged:

2. Commercial Fertilizers.—With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to solicitors and to the General Assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this State, whereby the interests of the farmers may be injuriously affected, and shall publish such information in The Bulletin of the Department;

3. Cattle and Cattle Diseases.—With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this State, or from one section of it to another, and may co-operate with the United States Department of Agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

4. Honey and Bee Industry.—With investigations adapted to promote the improvement of the honey and bee industry in this State, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the State to another, and may co-operate with the United States Department of Agriculture in establishing and maintaining quarantine lines or districts. The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the Commissioner of Agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations;

5. Insect Pests.—With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a misdemeanor;

6. New Agricultural Industries.—With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the State, especially the culture of truck and market gardens, the grape and other fruits;

7. Drainage and Irrigation; Fertilizer Sources.—With the investigation of the subject of drainage and irrigation and publication of information as to the

best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulæ for composting adapted to the different crops, soils, and materials;

8. Farm Fences.—With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

9. Sales of Fertilizers, Seeds, and Food Products.—With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, and with authority to make regulations concerning the same;

10. Inducement of Capital and Immigration.—With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this State, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the Department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring home-seekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

11. Diversified Farming.—With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

12. Farmers' Institutes.—With the holding of farmers' institutes in the several counties of the State, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the State. He may secure such assistants as may be necessary or beneficial in holding such institutes.

13. Publication of Bulletin.—The Commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The Department may determine the number of bulletins which shall be issued each year.

14. Reports to Legislature.—He shall transmit to the General Assembly at each session a report of the operations of the Department with suggestions of such legislation as may be deemed needful.

15. State Museum.—He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the State. (1901, c. 479, s. 4; Rev., ss. 3294, 3724, 3944; 1917, c. 16; C. S., s. 4688; 1939, c. 173.)

Editor's Note. — The 1939 amendment inserted subsection 4.

Constitutionality. — Legislation of this character has been upheld by well considered decisions in this and other jurisdictions. *Morgan v. Stewart*, 144 N. C. 424, 57 S. E. 149 (1907).

The authority to make administrative rules is not a delegation of legislative power, and such rules do not become legis-

lation, because violations thereof are punished as "public offenses." *State v. Sou. R. Co.*, 141 N. C. 486, 54 S. E. 294 (1906).

Cattle and Cattle Diseases.—The State Board of Agriculture has authority to make and enforce regulations for the quarantine of cattle and to prevent their transportation in view of preventing the spreading of contagious diseases. And an owner

permitting cattle to run at large in a no-fence county who wilfully allows cattle to stray across the line is guilty of a violation of the act. *State v. Garner*, 158 N. C. 650, 74 S. E. 458 (1912.)

The third clause of this section confers power upon the Commissioner to make regulations prohibiting the transportation of cattle. *State v. Southern R. Co.*, 141 N. C. 846, 54 S. E. 294 (1906).

The provision to get rid of the ticks on cattle and prevent infection is a reasonable and valid regulation. *State v. Hodges*, 180 N. C. 751, 105 S. E. 417 (1920).

Judicial Notice of Quarantined District.

—Where the quarantine regulations of the United States Department of Agriculture, relating to the transportation of cattle, which were adopted by the State Board of Agriculture, provided that no cattle originating in the quarantined district as therein described should be moved into "that part of Burke south of the Catawba River," the court judicially knows that a shipment of cattle from Burlington to Morganton has been across the line fixed as a quarantine line. *State v. Sou. R. Co.*, 141 N. C. 846, 54 S. E. 294 (1906).

Part 4. Co-operation of Federal and State Governments in Agricultural Work.

§ 106-23. Legislative assent to Adams Act for experiment station.—Legislative assent be and the same is hereby given to the purpose of an Act of Congress approved March sixteenth, one thousand nine hundred and six, entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams Act, and the money appropriated by this Act be and the same is hereby accepted on the part of the State for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the Act of Congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C. S., s. 4689.)

Cross References.—As to control of the experiment station, see §§ 106-15, 116-32.

Part 5. Co-operation between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; co-operation.—The Department of Agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The said Department is authorized to co-operate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of §§ 106-24 to 106-26. (1921, c. 201, s. 1; C. S., s. 4689(a); 1941, c. 343.)

Editor's Note.—The 1941 amendment rewrote the section.

Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

Cited in *Nantahala Power, etc., Co. v.*

§ 106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential.—The said Department shall annually provide and submit report books or forms to the person appointed by the board of county commissioners of the several counties of the State to collect and compile the statistical information required by §§ 106-24 to 106-26. The board of county commissioners may appoint any person to collect such information. The person so appointed shall serve at the will of the county commissioners and shall be paid such compensation for such services as may be deemed proper. Such report books or forms shall be furnished the person so appointed before he enters upon his duties. It shall be the duty of each person so appointed to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, he shall return

and deliver the said books or forms to the board of county commissioners of his county, within ten days after the time prescribed by law for securing the tax lists of his county. The person so appointed shall carefully check said books or forms for the purpose of determining whether or not at least ninety per cent (90%) of the tracts of land of such county are acceptably reported on in such report books or forms. Upon the receipt of the report books or forms properly filled out in accordance with §§ 106-24 to 106-26, the board of county commissioners of each county in the State shall, within ten days after receipt thereof, inspect and transmit or deliver such report books or forms to the Department of Agriculture. The information required in §§ 106-24 to 106-26 shall be held confidential by all persons having any connections therewith and by the Department of Agriculture. No information shall be required hereunder on land tracts consisting of less than three acres. (1921, c. 201, s. 2; C. S., s. 4689(b); 1941, c. 343; 1947, c. 540; 1949, c. 1273, s. 1; 1951, c. 1014, s. 1.)

Editor's Note.—The 1941 amendment re- wrote the section, the 1947 amendment made changes in the first sentence, the 1949 amendment again rewrote the section, and the 1951 amendment rewrote the second sentence.

§ 106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture.—In order to encourage maximum co-operation and efficiency, the Department of Agriculture shall pay to the county commissioners of the various counties of the State from appropriations made to the Department of Agriculture, the sum of twenty cents (20c) per acceptable report received by the Department of Agriculture in accordance with the provisions of §§ 106-24 to 106-26: Provided, however, that no such payment shall be made for any report from any township which does not cover acceptably at least ninety per cent (90%) of the tracts of land within such townships. In all those cases where the report covers less than eighty per cent (80%) of the tracts of land in a township, the Department of Agriculture shall withhold from the amount due the county for furnishing such reports the sum of twenty cents (20c) for each farm report shortage, and shall further deduct therefrom the sum of two dollars (\$2.00) for each unauthenticated report. Upon request, all report books or forms which are not complete in accordance with the provisions of §§ 106-24 to 106-26 shall be returned to the county board of commissioners or person charged with the duty of supervising or compiling the statistical survey information, in order that the same may be properly completed to comply with the provisions of this part. (1921, c. 201, s. 3; C. S., s. 4689(c); 1941, c. 343; 1949, c. 1273, s. 2; 1951, c. 1014, s. 2.)

Editor's Note. — The 1941 and 1949 amendments rewrote this section, and the 1951 amendment increased the compensation for making an acceptable report from ten to twenty cents.

§ 106-26.1. Co-operation of county farm and home demonstration agents and vocational teachers.—It shall be the duty of the county farm and home demonstration agents and vocational teachers to co-operate with the persons designated to obtain the information required by G. S. 106-25 and 106-26, and particularly to inform the farmers as to the advisability and necessity for obtaining the information necessary to carry out the purposes enumerated in G. S. 106-25 and 106-26. (1951, c. 1014, s. 3.)

ARTICLE 2.

North Carolina Fertilizer Law of 1947.

§§ 106-27 to 106-50: Superseded by §§ 106-50.1 to 106-50.22.

Editor's Note.—The superseded sections were codified from Public Acts 1933, c. 334, as amended by Public Acts 1937, c. 430, Public Acts 1941, c. 368, Session Laws 1943, c. 652, and Session Laws 1945, c. 287. Prior to the enactment of the superseding section, this article was entitled "North Carolina Fertilizer Law of 1933."

§ 106-50.1. **Title.**—This article shall be known as the “North Carolina Fertilizer Law of 1947”. (1947, c. 1086, s. 1.)

Editor’s Note.—Session Laws 1947, c. 1086, which rewrote this article, has been codified as §§ 106-50.1 to 106-50.22.

§ 106-50.2. **Enforcing official.**—This article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the “Commissioner”. (1947, c. 1086, s. 2.)

§ 106-50.3. **Definitions.**—When used in this article:

(a) The term “person” includes individuals, partnerships, associations, firms and corporations.

(b) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

(c) The term “distributor” means any person who offers for sale, sells, barter, or otherwise supplies mixed fertilizers or fertilizer materials.

(d) The term “sell” or “sale” includes exchange.

(e) The term “fertilizer material” means any substance containing nitrogen, phosphoric acid, potash, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of animal and vegetable manures.

(f) The term “mixed fertilizers” means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(g) The term “commercial fertilizer” includes both mixed fertilizer and/or fertilizer materials.

(h) The term “grade” means the minimum percentage of total nitrogen, available phosphoric acid, and soluble or available potash stated in the order given in this paragraph and, when applied to mixed fertilizers, shall be in whole numbers only.

(i) The term “brand name” means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trademark, or other designation.

(j) The term “official sample” means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the methods prescribed in paragraph (b) of § 106-50.7.

(k) The term “ton” means a net ton of two thousand pounds avoirdupois.

(l) The term “per cent” or “percentage” means the percentage by weight.

(m) The term “manufacturer” means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers; and the term “manufacture” means preparing, mixing, or manufacturing.

(n) The term “specialty fertilizer” means any fertilizer distributed primarily for use on noncommercial crops such as garden, lawns, shrubs, and flowers; and may include fertilizers used for research or experimental purposes.

(o) The term “unmanipulated manures” means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.

(p) The term “manipulated manures” means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, drying, grinding and other means.

(q) In “manipulated manures” the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed,

and the guarantee being stated in multiples of half (.50) percentages. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2.)

Editor's Note. — The 1951 amendment deleted the words "except unmanipulated vegetables and animal manures" in sub-section (e) and substituted the last sentence therefor, and inserted subsections (o), (p) and (q).

§ 106-50.4. Registration of brands.—(a) Each brand of commercial fertilizer and manipulated manure shall be registered before being offered for sale, sold, or distributed in this State. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a remittance of \$2.00 per brand and grade as a registration fee. Upon approval by the Commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on July 1st of each year. The application shall include the following information:

- (1) The name and address of the person guaranteeing registration.
- (2) The brand.
- (3) The grade.
- (4) The guaranteed analysis showing the minimum percentage of plant food in the following order and form:

A. In mixed fertilizers (other than those branded for tobacco):

Total nitrogen	— per cent
(Optional) water insoluble nitrogen	— per cent
percentage of total in multiples of five	
Available phosphoric acid	— per cent
Soluble or available potash	— per cent

Whether the fertilizer is acid-forming or nonacid-forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

B. In mixed fertilizer (branded for tobacco):

Field Fertilizer

Total nitrogen	— per cent
(Optional) nitrogen in the form of nitrate	— per cent
percentage of total in multiples of five.	
Water insoluble nitrogen	— per cent
percentage of total in multiples of five.	
Available phosphoric acid	— per cent
Soluble or available potash	— per cent
Maximum chlorine	— per cent
Total magnesium oxide	— per cent

Plant Bed Fertilizer

Total nitrogen	— per cent
(Optional) nitrogen in the form of nitrate	— per cent
percentage of total in multiples of five.	
(Optional) water insoluble nitrogen	— per cent
percentage of total in multiples of five.	
Available phosphoric acid	— per cent
Soluble or available potash	— per cent
Maximum chlorine	— per cent
Total magnesium oxide	— per cent

All fertilizer branded for tobacco must contain magnesium equivalent to a minimum of two per cent magnesium oxide for field fertilizer, and one per cent magnesium oxide for plant bed fertilizer. Whether the fertilizer is acid-forming or nonacid-forming.

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton) only.

C. In fertilizer materials (if claimed):

Total nitrogen	— per cent
Available phosphoric acid	— per cent
In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.	
Soluble or available potash	— per cent
Other recognized plant food	— per cent

D. In manipulated manures.

Total nitrogen	— per cent
Available phosphoric acid	— per cent
Soluble or available potash	— per cent
(The manures from which nitrogen, phosphoric acid, and potash are derived.)	

(5) The sources from which the nitrogen, phosphoric acid, and potash are derived.

(6) Magnesium (Mg) or magnesium oxide (MgO), calcium (Ca) or calcium oxide (CaO), and sulfur (S) may be claimed as secondary plant foods in all mixed fertilizers, but when one or more of these is so claimed the minimum percentage of total magnesium (Mg) or total magnesium oxide (MgO), total calcium (Ca) or total calcium oxide (CaO), and total sulfur (S), as applicable, shall be guaranteed; excepting that the sulfur guarantee for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.

(7) Borax may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of pounds of borax ($\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$) per 100 pounds of fertilizer and in increments of $\frac{1}{4}$, $\frac{1}{2}$, and multiples of $\frac{1}{2}$ pound per 100 pounds of fertilizer. The guarantee will be considered both a minimum and a maximum guarantee. The analysis guarantee shall be on a separate tag as prescribed by the Commissioner.

(8) Additional plant food elements, compounds, or classes of compounds, determinable by chemical control methods, may be guaranteed only by permission of the Commissioner by and with the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner. The Commissioner shall also fix penalties for failure to fulfill such guarantees.

(9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixed with other materials shall both the terms total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration; that if the Commissioner, after consultation with the director of the

agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review and/or by such other means as he may deem advisable. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6.)

Editor's Note.—The 1949 amendment inserted in subsection (a) (4) B a provision in regard to minimum magnesium content of fertilizers branded for tobacco. The 1951 amendment inserted the words "and

manipulated manure" in the first line of subsection (a), rewrote subsection (a) (4) B, added D under (a) (4) and rewrote subsection (a) (7).

§ 106-50.5. Labeling.—(a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by paragraph (a), with the exception of item (5), of § 106-50.4 printed either (1) on tags to be affixed to the end of the package or (2) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the container shall not be less than 2 inches in height for containers of 100 pounds or more; not less than 1 inch for containers of 50 and 99 pounds; and not less than ½ inch for packages of less than 50 pounds. In case of fertilizers sold in containers on which the brand or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by paragraph (a), with the exception of item (5), of § 106-50.4, shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached between the ears of each bag, or in the case of a machine sewed bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals. (1947, c. 1086, s. 5; 1949, c. 637, s. 2.)

Editor's Note. — The 1949 amendment added subsection (c).

The cases cited below were decided under a prior law.

Warranty of Contents.—Manufacturers and vendors of commercial fertilizers impliedly warrant that they contain the ingredients specified on the tags placed on the bags, according to the requirements of the statute. *Swift & Company v. Aydllett*, 192 N. C. 330, 135 S. E. 141 (1926).

Compliance with Statute Warranted. — When plaintiffs as manufacturers, dealers or agents sold to defendant commercial fertilizers, they must be held to have warranted that they had complied with the statute, and that the articles delivered, as commercial fertilizers were truthfully branded as required by the statute. *Swift v. Etheridge*, 190 N. C. 162, 129 S. E. 453 (1925).

Note for Purchase Price of Fertilizers Not Complying with Statute.—If the contents of the bags or packages delivered

to defendant by plaintiffs were not, in fact commercial fertilizers, of the analysis guaranteed on each bag or package, as required, there was no consideration for the note given for the purchase price of the articles bought by defendant, and plaintiffs are not entitled to recover on said note. *Swift v. Etheridge*, 190 N. C. 162, 129 S. E. 453 (1925).

The rule of caveat emptor, as applied at common law in the sale of articles of personal property, is not applicable to the sale of commercial fertilizers in this State. *Swift v. Etheridge*, 190 N. C. 162, 129 S. E. 453 (1925); *Swift & Co. v. Aydllett*, 192 N. C. 330, 135 S. E. 141 (1926).

The burden of proof is upon the manufacturer to show, in his action against the purchaser for the purchase price, that the goods were at least merchantable, and that the ingredients used in their manufacture were in accordance with the specifications upon the tags placed on the bags under the requirements of the statute. *Swift &*

Company v. Aydlett, 192 N. C. 330, 135 S. E. 141 (1926).

A waiver by the purchaser of any demand for damages on account of any deficiencies in the ingredients of fertilizers,

except such as may be ascertained in the manner specified in the statute, is valid and enforceable. *Armour Fertilizer Works v. Aiken*, 175 N. C. 399, 95 S. E. 657 (1918).

§ 106-50.6. Inspection fees.—(a) For the purpose of defraying expenses of the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture a charge of twenty-five cents per ton or one cent for each individual package containing fifty pounds net or less and more than five pounds of such commercial fertilizers, which charge shall be paid before a delivery is made to agents, dealers, or consumers in this State. Each bag, barrel, or other container of commercial fertilizer shall have attached thereto a tag to be furnished by the Department of Agriculture stating that all charges specified in this section have been paid, and the Commissioner, with the advice and consent of the Board of Agriculture is hereby empowered to prescribe a form for such tags, and to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county: Provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) The tax tags required under this section shall be issued each fiscal year (July 1st-June 30th) by the Commissioner and be sold to persons applying for same at the rate provided in paragraph (a) of this section. Undetached tags left in the possession of persons registering commercial fertilizers at the end of any fiscal year (July 1st-June 30th) may be exchanged for tags of the succeeding year, on or before September first.

(c) If any distributor of fertilizer shall desire to ship in bulk any commercial fertilizers, the said distributor of fertilizer shall send with the bill of lading sufficient canceled tax tags to pay the tax on the amount of goods shipped, and the agent of the railroad or other transportation company shall deliver the tags to the consignee when the goods are delivered. If otherwise delivered, the distributor shall associate such tags or stamps to each lot or with some document relating thereto.

(d) On individual packages of five pounds or less, there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars (\$25.00) for each brand offered for sale, sold, or distributed.

(e) Any distributor of fertilizer may make application to the Commissioner of Agriculture for a permit to report the tonnage of fertilizer sold and pay the inspection fee of 25 cents per ton on the basis of the report, in lieu of affixing inspection tags or stamps.

(f) The Commissioner may, in his discretion, grant such permit. The issuance of all permits will be conditional on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of fertilizer sold in the State.

(g) In the event such permit is granted by the Commissioner, the distributor must, as a further condition thereto, grant to the Commissioner or his duly authorized representative permission to examine such records and verify the tonnage statement.

(h) The tonnage report shall be monthly and the inspection fee shall be due and payable monthly, on the tenth of each month, covering the tonnage and grade of fertilizer sold during the past month.

(i) The report shall be under oath and on forms furnished by the Commissioner.

(j) If the report is not filed and the inspection fee paid by the tenth day following due date or if the report of tonnage be false, the Commissioner may revoke the permit; and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent which shall be added

to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required.

(k) In order to guarantee faithful performance each distributor shall before being granted a permit to use the reporting system deposit with the Commissioner cash in the amount of one thousand dollars (\$1000.00) or securities acceptable to the Commissioner of a value of at least one thousand dollars (\$1000.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. (1947, c. 1086, s. 6; 1949, c. 637, s. 3.)

Editor's Note.—The 1949 amendment added subsections (e)-(k).

The cases cited below were decided under a prior law.

Action to Secure Tax Wrongfully Collected.—The Board of Agriculture is a department of the State government, and an action against it to recover money alleged to have been wrongfully collected by it as a license tax cannot be maintained, the State not having given its consent to be

sued in that respect. *Lord, etc., Chemical Co. v. Board*, 111 N. C. 135, 15 S. E. 1032 (1892).

Property Tax.—The statute will not be so construed as to relieve manufacturers of fertilizers or fertilizing material, paying this inspection tax, from the payment of property tax required by the Constitution. *Focomoke Guano Co. v. Biddle*, 158 N. C. 212, 73 S. E. 996 (1912).

§ 106-50.7. **Sampling, inspection and testing.**—(a) It shall be the duty of the Commissioner, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this article. The Commissioner, individually or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to the provisions of this article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the Commissioner in accordance with §§ 106-50.4 and 106-50.5, the Commissioner, or any official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. If the lot comprises five (5) or more containers, portions shall be taken from each one up to a total of ten (10) containers. If the lot comprises from ten (10) to one hundred (100) containers, portions shall be taken from ten (10) containers. Of lots comprising more than one hundred (100) containers, portions shall be taken from ten (10) per cent of the total number of containers.

(2) In sampling commercial fertilizers, in bulk, either in a factory or a car, at least ten portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(3) In sampling, a core sampler shall be used that removes a core from a bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provision of this paragraph shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.

(4) The Commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Agricultural Chemists or by the Association of American Fertilizer Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in

connection with the administration of this article in lieu of those prescribed in items (1), (2), and (3) of this section.

(5) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(6) The Commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and no sample unless so taken shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this article.

(7) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture, setting forth the analysis made by the chemist of the Department of Agriculture, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to the methods prescribed by the Association of Official Agricultural Chemists or by the Association of American Fertilizer Control Officials. In the absence of methods prescribed by either of these associations, the Commissioner shall prescribe the method of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(2) The sample shall be drawn in the presence of the manufacturer, seller, or a representative designated by either party together with two disinterested freeholders; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders: Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture in taking samples and shall be drawn, mixed, and divided as directed in paragraphs (1), (2), (3), (4), and (5) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify

that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.

(3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.

(4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this State during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods. (1947, c. 1086, s. 7.)

§ 106-50.8. Plant food deficiency.—(a) The Commissioner in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (j) of § 106-50.3, and as provided for in paragraphs (b), (c), and (d) of § 106-50.7.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) Total nitrogen: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent on goods that are guaranteed two per cent; 0.25 of one per cent on goods that are guaranteed three per cent; 0.35 of one per cent on goods that are guaranteed four per cent; 0.40 of one per cent on goods that are guaranteed five per cent up to and including eight per cent; 0.50 of one per cent on goods guaranteed above eight per cent up to and including thirty per cent; and 0.75 of one per cent on goods guaranteed over thirty per cent.

(2) Available phosphoric acid: A penalty of three times the value of the deficiency, if such deficiency exceeds 0.40 of one per cent on goods that are guaranteed up to and including ten per cent; 0.50 of one per cent on goods that are guaranteed above ten per cent up to and including twenty-five per cent; 0.75 of one per cent on goods guaranteed over twenty-five per cent.

(3) Soluble or available potash: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent on goods that are guaranteed two per cent; 0.30 of one per cent on goods that are guaranteed three per cent; 0.40 of one per cent on goods guaranteed four per cent; 0.50 of one per cent on goods guaranteed above four per cent guaranteed above eight per cent up to and including twenty per cent; and 1.00 per cent on goods guaranteed over twenty per cent.

(4) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five per cent (or one hundred pounds of calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate equivalent, or fraction thereof in excess of the one hundred pounds allowed, may be assessed and paid as under paragraph (c) of this section.

(5) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of

one per cent, a penalty shall be assessed equal to ten per cent of the value of the fertilizer for each additional 0.5 of one per cent of excess or fraction thereof.

(6) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.10 of one per cent on goods guaranteed up to and including fifty-hundredths per cent; 0.20 of one per cent on goods guaranteed from five-tenths per cent to one per cent; 0.30 of one per cent on goods guaranteed from one per cent to two per cent; 0.50 of one per cent on goods guaranteed above two per cent and up to and including five per cent; and 1.00 per cent on goods guaranteed over five per cent.

(7) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.10 of one per cent for goods guaranteed up to and including five-tenths per cent; 0.15 of one per cent for goods guaranteed from five-tenths to one per cent; 0.25 of one per cent for goods guaranteed from one to two per cent; and 0.35 of one per cent for goods guaranteed above two per cent.

(8) Total magnesium or total magnesium oxide: If the magnesium content found falls as much as 0.30 of one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.15 of one per cent additional deficiency or fraction thereof. If the magnesium oxide content found falls as much as 0.50 of one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.25 of one per cent additional deficiency or fraction thereof.

(9) Total calcium or total calcium oxide: If the calcium content found falls as much as 0.70 of one per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.35 of one per cent additional deficiency or fraction thereof. If the calcium oxide content found falls as much as 1.00 per cent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.50 of one per cent additional deficiency or fraction thereof.

(10) Sulfur: If the sulfur content is found to be as much as 1.50 per cent below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of fifty cents per ton for each 0.50 of one per cent additional excess or fraction thereof, shall be assessed.

(11) Deficiencies or excesses in any other constituent or constituents covered under items (6) and (7), paragraph (a), § 106-50.4 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner: Provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as thereafter shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall be paid from said fund on order of the Commissioner and may be used by the Commissioner as he may see fit for the purpose of promoting the agricultural program of the State. (1947, c. 1086, s. 8.)

Editor's Note.—Paragraph (b) (3) of this section is printed just as it appears in the authenticated copy of the act. However, there seems to be something missing

between "per cent" and "guaranteed" in the phrase "four per cent guaranteed" near the end of the paragraph.

§ 106-50.9. Determination and publication of commercial values.—For the purpose of determining the commercial values to be applied under the provisions of § 106-50.8, the Commissioner shall determine and publish annually the values per pound of nitrogen, phosphoric acid, and potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9.)

§ 106-50.10. Minimum plant food content.—No superphosphate containing less than eighteen per cent available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble or available potash totals less than twenty per cent may be offered for sale, sold, or distributed in this State except for one grade of tobacco plant bed fertilizer in which the sum of the guarantees for total nitrogen, available phosphoric acid, and soluble or available potash shall not total less than sixteen per cent and except for complete field fertilizer containing twenty-five per cent or more of their nitrogen in water insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid, and soluble or available potash need not total more than eighteen per cent. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 106-50.11. Grade list.—The Board of Agriculture, after a public hearing open to all interested parties, and upon approval by the director of the agricultural experiment station, shall, prior to June 30th of each year or as early as practicable thereafter, promulgate a list of grades of mixed fertilizer adequate to meet the agricultural needs of the State. After this list of grades has been established, no other grades of mixed fertilizers shall be eligible for registration. The Commissioner may revise this list of grades by conforming to the procedure prescribed in this section.

It is provided, however, that any distributor may be permitted to sell one but not exceeding one grade of specialty fertilizer not on the current approved list. The Commissioner may, in his discretion, require a sample label to be submitted before registering such fertilizer. (1947, c. 1086, s. 11; 1951, c. 1026, s. 8.)

Editor's Note.—The 1951 amendment "grade" in the first sentence of the second paragraph. deleted the words "brand and" formerly appearing between the words "one" and

§ 106-50.12. False or misleading statements.—It shall be unlawful to make any false or misleading statement or representation in regard to any commercial fertilizer offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The commissioner is hereby authorized to refuse the registration of any commercial fertilizer with respect to which this section is violated. (1947, c. 1086, s. 12.)

§ 106-50.13. Grade-tonnage reports.—Each person registering commercial fertilizers under this article shall furnish the Commissioner with a confidential written statement of the tonnage of each grade of fertilizer sold by him in this State. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty days from date of the close of each period. The Commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operations of any person. (1947, c. 1086, s. 13.)

§ 106-50.14. **Publication of information concerning fertilizers.**—The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold within the State as compared with the analyses guaranteed under §§ 106-50.4 and 106-50.5: Provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14.)

§ 106-50.15. **Rules, regulations and standards.**—The Board of Agriculture is authorized, after public hearing, to prescribe such rules and regulations as may be found necessary for the enforcement of this article; and, upon recommendation of the director of the agricultural experiment station, to prescribe maximum chlorine for tobacco fertilizer. The Board of Agriculture is also authorized to regulate the weight of bags and/or packages in which fertilizer may be sold or offered for sale. (1947, c. 1086, s. 15; 1949, c. 637, s. 4.)

Editor's Note. — The 1949 amendment in lieu thereof the present second sentence. struck out the former second sentence relating to minimum of magnesium oxide required in tobacco fertilizer and inserted The stricken provision now appears in subsection (a) (4) B of § 106-50.4.

§ 106-50.16. **Short weight.**—If any commercial fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the registrant of said commercial fertilizer shall within thirty days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner may in his discretion allow reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16.)

§ 106-50.17. **Cancellation of registration.**—The Commissioner, upon approval of the Board of Agriculture, is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner. (1947, c. 1086, s. 17.)

§ 106-50.18. **"Stop sale", etc., orders.**—It shall be the duty of the Commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the Commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this article until the law had been complied with and said commercial fertilizer is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18.)

Editor's Note. — The word "had" in line six of this section was apparently intended to read "has".

§ 106-50.19. **Seizure, condemnation and sale.**—Any lot of commercial fertilizer not in compliance with the provisions of this article shall be subject to

seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this article. (1947, c. 1086, s. 19.)

§ 106-50.20. Punishment for violations.—Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(a) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of defrauding the purchaser.

(b) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(c) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is hereby authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

(d) The filing with the Commissioner of any false statement of fact in connection with the registration under § 106-50.4 of any commercial fertilizer.

(e) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this article.

(f) Knowingly taking a false sample of commercial fertilizer for use under provisions of this article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.

(g) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this article, if done prior to such analysis and disposition of the sample under the direction of the commissioner.

(h) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this article.

(i) Selling or offering for sale in this State commercial fertilizer without marking the same as required by § 106-50.5.

(j) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by § 106-50.10.

(k) Failure to obtain and affix tags as provided for in this article. (1947, c. 1086, s. 20.)

For sufficiency of indictment for violation of former statute, see *State v. Oil Co.*, 154 N. C. 635, 70 S. E. 741 (1911).

§ 106-50.21. **Sales or exchanges between manufacturers.**—Nothing in this article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who have registered their brands as required by the provisions of this article. (1947, c. 1086, s. 21.)

§ 106-50.22. **Appeals from assessments and orders of Commissioner.**—Nothing contained in this article shall prevent any person from appealing to a court of competent jurisdiction from any assessment or penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1947, c. 1086, s. 22.)

ARTICLE 3.

Fertilizer Laboratories.

§ 106-51. **Certification of fertilizer laboratories.**—The Commissioner of Agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the commissioner of Agriculture shall supply such information. (1933, c. 551.)

ARTICLE 4.

Insecticides and Fungicides.

§ 106-52. **Rules and standards.**—The Department of Agriculture shall have power to make rules, regulations and adopt standards to carry out the designs and purposes of this article. (1927, c. 53, s. 1.)

Editor's Note.—For subsequent law affecting this article, see §§ 106-65.1 to 106-65.12.

§ 106-53. **Registration.**—Before any manufacturer or dealer shall sell, offer or expose for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide he shall register with the Department of Agriculture the name of each brand of said preparation, the name and address of the manufacturer or dealer, the minimum per cent of each and every toxic chemical or compound present, and the specific name of each active ingredient used in its manufacture and the weight of the packages in which the material is packed. The words "Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides" mentioned and used in this article, shall apply only to insecticides and fungicides used on cotton, tobacco, all field crops, gardens, orchards, fruits, etc., for the control or destruction of insect life and fungus diseases. (1927, c. 53, s. 2.)

§ 106-54. **Labels to be affixed.**—Every lot, package or parcel of Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, offered or exposed for sale within this State, shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof containing a legible and

plainly printed statement in the English language clearly and truly certifying:

- (a) The net weight of the lot, package or parcel;
 - (b) The name, brand or trademark;
 - (c) The name and address of the manufacturer, importer, jobber, firm, association, corporation, dealer or person, etc., responsible for placing the commodity on the market;
 - (d) The minimum per cent of each and every toxic chemical or compound present;
 - (e) The specific name of each active ingredient used in its manufacture.
- (1927, c. 53, s. 3.)

§ 106-55. Refusal and cancellation of registration.—The Commissioner shall have the power to refuse to register any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide under a name, brand or trademark, which would be misleading or deceptive. Should any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide be registered in the State and it is afterward discovered that such registration is in violation of any of the provisions of this article, the Commissioner shall cancel such registration. (1927, c. 53, s. 4.)

§ 106-56. Registration fee; expiration of registration certificate; renewal.—All manufacturers or distributors, for the purpose of defraying the expenses connected with the enforcement of this article, before selling, offering or exposing for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticides and fungicides, shall pay annually to the Department of Agriculture a registration fee of ten dollars (\$10.00) for each and every brand of the aforementioned insecticides and fungicides registered as required under § 106-53. All certificates of registration shall expire on the thirty-first day of December next following the date of issuance and shall be subject to renewal upon receipt of annual registration fees. (1927, c. 53, s. 5; 1939, c. 284, s. 1.)

Editor's Note. — The 1939 amendment rewrote this section.

§ 106-57. Certificates entitling manufacturers or distributors to sell; unlawful sale, etc.—To manufacturers or distributors who have duly registered their brands and have paid registration fees on Paris green, calcium arsenate, lead arsenate or other insecticides and fungicides in compliance with the requirements of this article, there shall be issued by the Department of Agriculture certificates which shall entitle said manufacturers or distributors to sell all duly registered brands until the expiration of such certificates as provided under § 106-56. When any manufacturer or distributor shall have duly complied with the provisions of this article, no other agency representing such manufacturer or distributor shall be required to register or pay registration fees on such brands as have been duly registered. It shall be unlawful for any manufacturer or distributor, or their agents to sell, offer or expose for sale in this State any of the aforementioned insecticides or fungicides which have not been duly registered and for which annual registration fees have not been paid. (1927, c. 53, s. 6; 1939, c. 284, s. 1.)

Editor's Note.—Prior to the 1939 amendment this section provided for tax stamps.

§ 106-58. Requirement of identifying color or medium.—For the purpose of safeguarding the legitimate uses of Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides and to prevent the poisoning of man or animal by confusion with or mixing with foods and feeds, either by accident or intent, it shall be required as a qualification for registration that all such aforesaid insecticides and fungicides which are likely to be confused with or which

are not readily apparent when mixed with such foods or feeds, shall bear or contain some identifying added color or medium to differentiate them from, or to show their presence when contained in such foods or feeds; provided that no commodity intended for insecticidal, fungicidal or similar purposes which is already developed, or new products for these purposes which may appear from time to time shall be excluded from registration where there is not available or has not been developed a suitable identifying color or medium; and, provided that in the absence of a suitable identifying color or medium, the Commissioner shall have authority himself or through representatives designated by him to co-operate with manufacturers and distributors in the development of suitable safeguards; final decision, with due right of appeal, resting in the discretion of the Board of Agriculture. (1927, c. 53, s. 7; 1929, c. 196, s. 1; 1939, c. 284, s. 1.)

Editor's Note.—Prior to the 1939 amendment this section exempted sales in small packages from the requirement of tax stamps. Section 4 of the amendatory act repealed the 1929 act.

§ 106-59. Statement mailed; what shown.—Every manufacturer and dealer who has registered Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for sale within the State of North Carolina shall mail the Commissioner on forms provided by the Commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, and the initials and numbers of the car, if sold in car lots. (1927, c. 53, s. 8; 1933, c. 233; 1939, c. 284, s. 4.)

Editor's Note. — The 1933 amendment, which substituted the word "poisonous" for the word "other" between the words "any" and "insecticide", was repealed by the 1939 amendment.

§ 106-60. Entrance for inspection or sampling; analysis.—The Commissioner in person, or by deputy, shall have the power to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take samples for analysis from any lot, package or parcel of insecticides or fungicides. It shall be unlawful for any person to oppose entrance of said Commissioner or deputy or in any way interfere with the discharge of his duty. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of the United States, and shall be made by chemists of the Department of Agriculture. Where a method of analysis is required before the Association of Official Agricultural Chemists has adopted an official or tentative one, and pending appearance of an official method by the Association of Official Agricultural Chemists, such methods as may be available or may be developed, subject to approval by the Board of Agriculture, may be used; provided that such method upon being used shall be immediately available for use and checking to all persons, firms or corporations concerned, and results from such methods shall be subject to a reasonable period of consideration and hearings before any proceedings based upon them are instituted. (1927, c. 53, s. 9; 1939, c. 284, s. 2.)

Editor's Note. — The 1939 amendment added the last sentence.

§ 106-61. Use of stamp a second time; adulterated and misbranded articles; injunction.—It shall be unlawful for any manufacturer or distributor to sell, offer or expose for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticides or fungicides which are adulterated or misbranded within the meaning of this article. Any Paris green, calcium arsenate, lead arsenate and any other insecticide or fungicide shall be deemed to be adulterated if its strength or purity fall below the professed standard or quality

under which it is sold; or if any substance has been substituted wholly or in part for the article; or if any valuable constituent of the article has been wholly or in part abstracted; or if it be in any way depreciated or be in departure from the true and honest value represented. Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the lot, package or parcel, or, if any false or misleading statements concerning its value are made on the lot, package or parcel, or in any printed advertising matter issued by the manufacturer or dealer that registered Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, or if the number of net pounds set forth upon the package, lot, or parcel is not correct. It shall be the duty of the Attorney General when requested by the Commissioner, to institute suit to enjoin any manufacturer, or dealer, resident or nonresident, from manufacturing or selling or soliciting orders for the sale of Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, for use in this State without complying with all the provisions in this article, which injunction may be issued without bond or advance cost. (1927, c. 53, s. 10; 1939, c. 284, s. 3.)

Editor's Note. — The 1939 amendment substituted the first two sentences above in lieu of the former first sentence.

§ 106-62. Seizure of articles. — (a) When any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is found to be sold, offered or exposed for sale in this State in violation of any provisions of this article, or whenever a duly authorized agent of the Department of Agriculture finds he has probable cause to believe that any insecticide or fungicide is being sold, offered or exposed for sale in this State in violation of any provisions of this article, he shall affix to such insecticide or fungicide a tag, appropriate marking, or shall post a notice on the premises in which said insecticide or fungicide is located, giving notice that such insecticide or fungicide is suspected of being sold, offered or exposed for sale in violation of the provisions of this article or that the same is being sold, offered or exposed for sale in violation of the provisions of this article, and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such Paris green, calcium arsenate, lead arsenate or other insecticide or fungicide by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed insecticide or fungicide by sale or to offer to expose same for sale without such permission.

(b) When an insecticide or fungicide detained or embargoed under subsection (a) has been found by such agent to be sold, offered or exposed for sale in violation of any provisions of this article he shall petition the judge of any recorder's, county or superior court in whose jurisdiction the insecticide or fungicide is detained or embargoed for an order of condemnation of such insecticide or fungicide. When such agent has found that such insecticide or fungicide so detained or embargoed is not being sold, offered or exposed for sale in violation of any of the provisions of this article he shall remove the tag, marking or notice.

(c) If the court finds that the detained or embargoed insecticide or fungicide is being sold, offered or exposed for sale in violation of any of the provisions of this article such insecticide and fungicide shall, after entry of the decree of the court, be destroyed at the expense of the claimant thereof, under the supervision of such agent and all court costs and fees and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that if any insecticide or fungicide can be corrected by proper labeling or processing or by any other correction so that the same will comply with the provisions of this article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such

insecticide or fungicide shall be so labeled, processed or corrected, has been executed, may by order direct that such insecticide or fungicide be delivered to the claimant thereof for such labeling, processing or correction under the supervision of an agent of the Department of Agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant on representation to the court by the Department of Agriculture that the insecticide or fungicide is no longer in violation of this article, and that the expenses of such supervision have been paid. (1927, c. 53, s. 11; 1945, c. 668.)

Editor's Note. — The 1945 amendment rewrote this section.

§ 106-63. **Copy of analysis in evidence.**—A copy of the analysis made by any chemist of the Department of Agriculture of any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide certified to by him shall be admissible as evidence in any court of the State on trial of any issue involving the merits of the insecticides and fungicides covered by this article. (1927, c. 53, s. 12.)

§ 106-64. **Articles in transit.**—Nothing contained in this article shall interfere with Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide passing through the State in transit, nor shall it apply to the delivery of materials to manufacture Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for manufacturing purposes. (1927, c. 53, s. 13.)

§ 106-65. **Violation of article.**—Any manufacturer or dealer violating any provision or section in this article, or any rule, regulation or standard of the Department of Agriculture promulgated under this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (1927, c. 53, s. 14.)

ARTICLE 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§ 106-65.1. **Title.**—This article may be cited as the “Insecticide, Fungicide and Rodenticide Act of 1947.” (1947, c. 1087, s. 1.)

Cross Reference.—For other provisions relating to insecticides and fungicides, see §§ 106-52 through 106-65.

§ 106-65.2. **Definitions.**—For the purpose of this article:

a. The term “economic poison” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest.

b. The term “device” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, bacteria, or weeds, or such other pests as may be designated by the Commissioner, but not including simple, mechanical devices such as rat traps, or equipment used for the application of economic poisons when sold separately therefrom.

c. The term “insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

d. The term “fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi, or plant disease.

e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Commissioner shall declare to be a pest.

f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

g. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other worms, or any other invertebrates which are destructive, constitute a liability and may be classed as pests.

h. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other animals.

i. The term "weed" means any plant which grows where not wanted.

j. The term "ingredient statement" or "guaranteed analysis statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; and, in addition, in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each stated as elemental (metallic) arsenic.

k. The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

l. The term "inert ingredient" means an ingredient which is not an active ingredient.

m. The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

n. The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

o. The term "Board of Agriculture" or "Board" means the North Carolina Board of Agriculture.

p. The term "Commissioner" means the Commissioner of Agriculture.

q. The term "registrant" means the person registering any economic poison pursuant to the provisions of this article.

r. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, or relating to the economic poison or device when employed for commercial purposes.

s. The term "labeling" means all labels and other written, printed, or graphic matter:

- (1) Upon the economic poison or device or any of its containers or wrappers;
- (2) Accompanying the economic poison or device at any time;
- (3) To which reference is made on the label or in literature accompanying or relating commercially to the economic poison or device, except when accurate, nonmisleading reference is made to current official publications of the State Experiment Station, the State College of Agriculture, the North Carolina Department of Agriculture, the North Carolina State Board of Health, or similar federal institutions or other official agencies of this State or other states when such agencies are authorized by law to conduct research in the field of economic poisons.

t. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in

part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

u. The term "misbranded" shall apply:

(1) To any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) To any economic poison:

(a) If it is an imitation of or is offered for sale under the name of another economic poison;

(b) If its labeling bears any reference to registration under this article;

(c) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

(d) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

(e) If the label does not bear an ingredient or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient or guaranteed analysis statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;

(f) If any word, statement, or other information required by or under the authority of this article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(g) If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or vegetation, to which it is applied, or to the person applying such economic poison, excepting pests and weeds. (1947, c. 1087, s. 2.)

§ 106-65.3. Prohibited acts.—a. It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any economic poison which is not registered pursuant to the provisions of § 106-65.5, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: Provided, that, in the discretion of the Commissioner, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product: Provided further, that changes at no time are permissible if they lower the efficacy of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

(a) The name and address of the manufacturer, registrant, or person for whom manufactured;

(b) The name, brand, or trademark under which said article is sold; and

(c) The net weight or measure of the content subject, however, to such reasonable variations as the Board of Agriculture may permit.

(3) Any economic poison which contains any substance or substances in quan-

ties highly toxic to man, determined as provided in § 106-65.6, unless the label shall bear, in addition to any other matter required by this article:

(a) The skull and crossbones;

(b) The word "poison" prominently, in red, on a background of distinctly contrasting color; and

(c) A statement of an antidote for the economic poison.

(4) The economic poisons commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white or lightly colored powder economic poison which the Board of Agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the Board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded, or any device which is misbranded.

b. It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from an economic poison in a manner that may defeat the purpose of this article;

(2) For any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this article;

(3) For any person to give a guaranty or undertaking provided for in § 106-65.8 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under § 106-65.8 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

(4) For any person to use for his own advantage or to reveal, other than to the Commissioner, or officials or employees of the United States Department of Agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Commissioner may prescribe, any information relative to formulas of products acquired by authority of § 106-65.5; and

(5) For any person to oppose or interfere in any way with the Commissioner or his duly authorized agents in carrying out the duties imposed by this article. (1947, c. 1087, s. 3.)

Editor's Note.—It would seem that the word "he" near the end of subsection (a) (4) should read "it."

§ 106-65.4. Injunctions.—In addition to the remedies herein provided the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 106-65.3, irrespective of whether or not there exists an adequate remedy at law. (1947, c. 1087, s. 4.)

§ 106-65.5. **Registration.**—a. Every economic poison which is distributed, sold, or offered for sale within this State or delivered for transportation or transported in interstate commerce or between points within this State shall be registered in the office of the Commissioner, and such registrations shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels may, in the discretion of the Commissioner, be added by supplement statements during the current period of registration. The registrant shall file with the Commissioner a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the economic poison;

(3) A complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and

(4) If requested by the Commissioner a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last reregistered.

b. The registrant, before selling or offering for sale any economic poison in this State, shall register each brand or grade of such economic poison with the Department of Agriculture upon forms furnished by the Department, and, for purposes of defraying expenses connected with the enforcement of this article, shall pay to the Department an annual inspection fee of ten (\$10.00) dollars for each and every brand or grade to be offered for sale in this State, whereupon there shall be issued to the registrant by the Department of Agriculture, a certificate entitling the registrant to sell all duly registered brands in this State until the expiration of the certificate. All certificates shall expire on December 31st of each year and are subject to renewal upon receipt of annual inspection fees.

c. The Commissioner, whenever he deems it necessary in the administration of this article, may require the submission of the complete formula of any economic poison. If it appears to the Commissioner that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this article, he shall register the article.

d. If it does not appear to the Commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the article so as to afford the registrant an opportunity to make the necessary corrections.

e. The Commissioner is authorized and empowered to refuse to register, or to cancel the registration of, any brand of economic poison as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the Board of Agriculture.

f. Notwithstanding any other provision of this article, registration is not required in the case of an economic poison shipped from one plant within this State to another plant within this State operated by the same person. (1947, c. 1087, s. 5.)

§ 106-65.6. **Determination; rules and regulations; uniformity.**—a. The Commissioner is authorized, after opportunity for a hearing:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) To determine whether economic poisons are highly toxic to man; and

(3) To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of paragraph (4), subsection a of § 106-65.3.

b. The Commissioner is further authorized:

(1) To effect the collection and examination of samples of economic poisons and devices to determine compliance with the requirements of this article; and he shall have the authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain economic poison, or devices, for the purpose of inspection or sampling, and to procure samples for analysis or examination from any lot, package or parcel of economic poison, or any device;

(2) To publish from time to time, in such forms as he may deem proper, complete information concerning the sale of economic poisons, together with such data on their production and use as he may consider advisable, and reports of the results of the analyses based on official samples of economic poisons sold within the State.

c. The Board of Agriculture is authorized to prescribe, after public hearing following due public notice, such rules, regulations, and standards relating to the sale and distribution of economic poisons as they may find necessary to carry into effect the full intent and meaning of this article.

d. In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, the Board of Agriculture and the Commissioner are authorized and empowered to co-operate with, and enter into agreements with, any other agency of this State, the United States Department of Agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this article and securing uniformity of regulations. (1947, c. 1087, s. 6.)

§ 106-65.7. **Violations.**—a. If it shall appear from the examination or evidence that any of the provisions of this article or the rules and regulations issued thereunder have been violated, the Commissioner may cause notice of such violation to be given to the registrant, distributor, and possessor from whom said sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Board of Agriculture. If it appears after such hearing that there has been a sufficient number of violations of this article or the rules and regulations issued thereunder, the Commissioner may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such officer. It shall be the duty of every solicitor to whom the Commissioner shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provisions of this article or the rules and regulations issued thereunder shall be adjudged guilty of a misdemeanor and shall be punished in the discretion of the court.

b. Nothing in this article shall be construed as requiring the Commissioner to report for the institution of proceedings under this article, minor violations of this article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1947, c. 1087, s. 7.)

§ 106-65.8. **Exemptions.**—a. The penalties provided for violations of subsection a of § 106-65.3 shall not apply to:

(1) Any carrier while lawfully engaged in transporting an economic poison within this State, if such carrier shall, upon request, permit the Commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

(2) Public officials of this State and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of an economic poison for experimental use only:

(a) By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of economic poisons; or

(b) By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold", together with the manufacturer's name and address: Provided, however, that if a written permit has been obtained from the Commissioner, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

(4) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this article, designating this article. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this article. (1947, c. 1087, s. 8.)

§ 106-65.9. **Short weight.**—If any economic poison in the possession of consumers is found by the Commissioner to be short in weight, the registrant of said economic poison shall within thirty days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. (1947, c. 1087, s. 9.)

§ 106-65.10. **"Stop sale" orders.**—It shall be the duty of the Commissioner to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of economic poison and to hold at a designated place when the Commissioner finds said economic poison is being offered or exposed for sale in violation of any of the provisions of this article until the law has been complied with and said economic poison is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the economic poison so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1087, s. 10.)

§ 106-65.11. **Seizures, condemnation and sale.**—Any lot of economic poison not in compliance with the provisions of this article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said economic poison is located. In the event the court finds the said economic poison to be in violation of this article and orders the condemnation of said economic poison, it shall be disposed of in any manner consistent with the quality of the economic poison and the laws of the State: Provided, that in no instance shall the disposition of said economic poison be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said economic poison or for permission to process or relabel said product to bring it into compliance with this article. (1947, c. 1087, s. 11.)

§ 106-65.12. **Delegation of duties.**—All authority vested in the Commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the Department of Agriculture as the Commissioner may from time to time designate for said purpose. (1947, c. 1087, s. 12.)

ARTICLE 5.

Seed Cotton and Peanuts.

§ 106-66. **Sale of seed cotton or peanuts.**—If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose, and to be open to inspection by the public at all business hours, the date of such buying or receiving, the number of pounds in each lot, the true name of the person or persons from whom bought or received and that he is the owner thereof, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the State to allege and prove that the defendant bought or received the seed cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (1887, c. 199; 1905, cc. 201, 523; Rev., s. 3812; C. S., s. 5083; 1929, c. 281, s. 1.)

Editor's Note.—As to constitutionality *v. Moore*, 104 N. C. 714, 10 S. E. 143 of statute similar to this section, see *State* (1889).

§ 106-67. **Traveling seed cotton buyers must report; failure a misdemeanor.**—Any person engaged in traveling from house to house or from place to place buying or trading for seed cotton shall keep a correct record of the name and post-office address of each person from whom he buys or with whom he trades for seed cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed cotton, showing the name and post-office address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this section shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1919, c. 43; C. S., s. 5084.)

ARTICLE 6.

Cottonseed Meal.

§ 106-68. **Cottonseed meal defined; inspection tax.**—Cottonseed meal is a product of the cottonseed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture of cottonseed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty-five cents per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (1917, c. 242, s. 1; C. S., s. 4704; 1939, c. 286.)

Editor's Note.—The 1939 amendment increased the inspection tax from twenty to twenty-five cents per ton.

§ 106-69. Bags to be branded with specified particulars.—All cottonseed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

1. Cottonseed meal (with brand and grade).
2. Weight of package.
3. Ammonia and protein.
4. Name and address of manufacturer. (1917, c. 242, s. 2; C. S., s. 4705.)

§ 106-70. Grades and standards established.—No person, firm, or corporation shall offer for sale any cottonseed meal except as provided in § 106-69, graded and classed as follows:

1. Prime cottonseed meal by analysis must contain at least seven and one-half per cent of ammonia or thirty-eight and fifty-six one-hundredths per cent of protein.

2. Good cottonseed meal by analysis must contain at least seven per cent of ammonia, or thirty-six and no one-hundredths per cent of protein.

3. Ordinary cottonseed meal by analysis must contain at least six and one-half per cent of ammonia, or thirty-three and forty-four hundredths per cent of protein. (1917, c. 242, s. 3; C. S., s. 4706.)

The purpose of these sections is to promote agriculture by insuring the sale of fertilizers containing plant food in certain proportions and of sufficient quality and

quantity and to protect those who cultivate the soil from imposition and fraud. *State v. Faulkner*, 175 N. C. 787, 95 S. E. 171 (1918).

§ 106-71. Rules to enforce statute; misdemeanor.—The Board of Agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person willfully violating any of the regulations made by the Board of Agriculture in connection with the provisions of this article shall be guilty of a misdemeanor. (1917, c. 242, s. 4; C. S., s. 4707.)

§ 106-72. Sales without tag; misuse of tag; penalty; forfeiture.—Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cottonseed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cottonseed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the Commissioner of Agriculture by suit brought in the name of the State, and any amount so recovered shall be paid one-half to the informant and one-half to the State Treasurer for the use of the Department of Agriculture. If any such cottonseed meal shall be condemned, as provided by law, it shall be the duty of the Department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cottonseed meal, or for any agent of any railroad or other transportation company to deliver any such cottonseed meal in violation of this section. (1917, c. 242, s. 4; C. S., s. 4708.)

Penalty Not Applicable to Purchaser.—In construing a former statute of similar import, it was held that the penalty applies to the manufacturer or any one, either as principal or agent, who sells or offers to sell, or removes the fertilizer, and the word "remove" does not apply to the purchaser

who receives the fertilizer not for sale, but for use, and when the only removal by him is taking the fertilizer from the railroad station and then distributing the same under his crops. *Johnson v. Carson*, 161 N. C. 371, 77 S. E. 307 (1913).

§ 106-73. **Sales contrary to article a misdemeanor.**—Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cottonseed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Rev., s. 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2; C. S., s. 4709.)

In General. — The fact that neither knowledge of the defect nor intent to defraud is made an element in the criminal offense is strong reason for confining the statute to the manufacturer, who should be held to have knowledge of the composition of the fertilizer he offers for sale, and

to the owner, not a manufacturer, and his agent with authority to sell, who have the opportunity to test the fertilizer before they sell it. *State v. Faulkner*, 175 N. C. 787, 95 S. E. 171 (1918).

Applied in *State v. Oil Co.*, 154 N. C. 635, 70 S. E. 741 (1911).

§ 106-74. **Forfeiture for unauthorized sale; release from forfeiture.**—All cottonseed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture. The net proceeds from such sale shall be placed in the general fund of the Department and accounted for upon its books. The Commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the Department in any proceedings connected therewith. (1917, c. 242, s. 5; C. S., s. 4710.)

§ 106-75. **Method of seizure and sale on forfeiture.**—Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer or agent of the Department; the sale to be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (1917, c. 242, s. 5; C. S., s. 4711.)

§ 106-76. **Collection and analysis of samples.**—The Department of Agriculture shall have the same authority and powers for taking and analyzing samples of cottonseed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cottonseed meal as are prescribed and followed for taking samples of fertilizer and fertilizer materials. (1919, c. 271; C. S., s. 4712.)

§ 106-77. **Sales below guaranteed quality; duties of Commissioner.**—When the Commissioner of Agriculture shall be satisfied that any cottonseed meal is five per cent below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cottonseed meal shall fall as much as ten per cent below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said deficiency be made good to all persons who, in the opinion of the Commissioner, have purchased the said meal; and the Commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within thirty days after notice to the company. If the Commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the Commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer shall resist such collection or payment, the Commissioner shall immediately publish the analysis and the facts in the Bulletin and in such newspapers in the State as he may deem necessary. (1917, c. 242, s. 7; C. S., s. 4713.)

§ 106-78. **Adulteration prohibited.**—It shall be unlawful for any manufacturer to adulterate cottonseed meal in the process of manufacture or otherwise. (1917, c. 242, s. 8; C. S., s. 4714.)

ARTICLE 7.

Pulverized Limestone and Marl.

§ 106-79. **Board of Agriculture authorized to make and sell lime to farmers.**—The North Carolina Board of Agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the State, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the State at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant. (1919, c. 182, s. 1; C. S., s. 4715.)

§ 106-80. **Convict labor authorized.**—With the approval of the Governor, when requested by the Board of Agriculture, the chairman of the State Highway and Public Works Commission may furnish a superintendent with a squad of able-bodied convicts, not to exceed fifty, to do such work as the Commissioner, with the authority of the Board, may deem necessary to mine, prepare, load and dispose of the material. The Board shall pay the state quarterly such amount as shall be agreed upon by the chairman of the State Highway and Public Works Commission and the Board of Agriculture for their work, out of the proceeds of the sales, and the State shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales. (1919, c. 182, s. 2; C. S., s. 4716; 1933, c. 172, s. 18.)

ARTICLE 8.

Sale, etc., of Agricultural Liming Material, etc.

§ 106-81. **Regulation of sale, etc., of agricultural liming material, etc.**—All agricultural liming material, agricultural liming material with potash, and land plaster, hereinafter named either as the aforesaid separate items, or collectively as "materials coming under this article," or as "said materials," to be sold, offered, or exposed for sale in this State, shall be subject to regulation as provided by the following sections of this article. (1941, c. 275, s. 1.)

§ 106-82. **Registration of brands by manufacturers and vendors.**—Every manufacturer or vendor proposing to sell, offer or expose for sale in this State, the materials coming under this article shall, annually on or before the first day of January of each year, or before offering said materials for sale in this State, register with the Commissioner of Agriculture, on forms to be furnished by said Commissioner, each brand of the said materials that he proposes to offer for sale during the next ensuing calendar year, or remainder thereof, giving for each brand the information prescribed in the following subsections:

- (a) Net weight when sold in packages.
- (b) A brand or trade name truly descriptive of the product.
- (c) The guaranteed analysis showing:

(1) In case of agricultural liming materials, the minimum per cent of calcium expressed as calcium carbonate (CaCO_3) and of magnesium expressed as magnesium carbonate (MgCO_3) if the product be unburned or a mixture of both burned and unburned material; or as calcium oxide (CaO) and magnesium oxide (MgO) if the product be in the burned state and, in either case, the total neutralizing value expressed as calcium carbonate equivalent or neutralizing equivalent, and the fineness of the material, excepting that guarantee of screen analysis shall not be required for the products from completely burned limestone or shells. (The terms "calcium carbonate equivalent" and "neutralizing equivalent," for the purpose of this article, shall mean one and the same thing. Fineness shall be deter-

mined by screens complying with the specifications of the United States Bureau of Standards.)

(2) In case of agricultural liming material with potash, the same requirement as for agricultural liming material, subsection (c) (1) of this section, but including also the minimum per cent of available potash as the oxide (K_2O). (The potash content of agricultural liming material with potash shall not be below four per cent, and the guarantee for said potash content shall be in whole numbers only.)

(3) In case of land plaster, the minimum per cent of calcium sulfate ($CaSO_4$).

(d) The name and address of the manufacturer or vendor guaranteeing the registration.

(e) In case of combinations of materials from different sources, the source, chemical form, and minimum per cent of each material in truly descriptive terms. (1941, c. 275, s. 2.)

§ 106-83. Labeling.—All of the said materials sold, offered, or exposed for sale in this State shall have attached thereto, or be accompanied by a plainly printed statement giving the information as required under § 106-82, subsections (a), (b), (c), (d) and (e). In case of materials sold in packages, the said information shall be plainly printed upon the package, or upon a tag or label attached thereto, of such quality and in such manner that it shall withstand normal handling, and, in case of material sold in bulk, the said statement shall be delivered to the purchaser either with the material, or with the invoice therefor. (1941, c. 275, s. 3.)

§ 106-84. Registration and tonnage fees; tags showing payment; reporting system; license certificates.—(a) For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this article, there shall be paid, by the manufacturers or vendors, to the Department of Agriculture, for each brand or grade of said materials registered as required under § 106-82, an annual registration fee of five dollars (\$5.00) for each calendar year or part thereof, said fee to be paid at the time of registration.

(b) Likewise, in addition to the above stated registration fee there shall be paid upon said materials sold in this State, in the manner specified under subsection (c) of this section, tonnage fees as follows: For agricultural liming material, five cents per ton; for agricultural liming material with potash, twenty-five cents per ton; and for land plaster, five cents per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose of use in the manufacture of fertilizer.

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the Department of Agriculture, stating that all charges specified in this article have been paid, and the Commissioner of Agriculture, with the advice and consent of the Board of Agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the Commissioner of Agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this article in this State may make application for a permit to report the materials sold and pay the tonnage fees as set forth in subsection (b) of this section, as the basis of said report, in lieu of affixing inspection tags or labels. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such

records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the tonnage fees shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the tenth day following the date due or if the report be false, the Commissioner may revoke the permit, and if the tonnage fees be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent which shall be added to the tonnage fees due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of two hundred fifty dollars (\$250) or securities acceptable to the Commissioner of a value of at least two hundred fifty dollars (\$250) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance.

(d) To manufacturers or vendors of the materials covered in this article, who have registered their brands of the said materials and paid registration fees as required herein, shall be issued by the Commissioner of Agriculture, without further charge, certificates licensing said manufacturers or vendors, themselves or through their agents, to sell in this State the brands of materials named in said certificate, for the period of time designated therein. (1941, c. 275, s. 4; 1949, c. 828.)

Editor's Note. — The 1949 amendment added the second paragraph of subsection (c).

§ 106-85. Report of sales.—In addition to the statement required under § 106-82, each manufacturer or vendor of the materials covered in this article shall, on or before the first day of February of each year, file with the Department of Agriculture a written report showing the total number of net tons of each brand and grade of the said materials sold by him, or his representatives or agents in this State, during the last preceding year. License for the sale of said materials within this State shall not be issued for a succeeding year to any manufacturer or vendor for the continued sale of his product unless and until said report has been made. (1941, c. 275, s. 5.)

§ 106-86. Administration; inspections, sampling and analysis.—It shall be the duty of the Commissioner of Agriculture to institute the necessary proceedings and have prepared the necessary equipment to put into effect the provisions of this article, and to authorize the collecting of official samples of the materials covered by it, to have them analyzed, and to have results published for the information of the public: For this purpose such inspectors or representatives as he may duly authorize shall have full access, ingress and egress to and from all places of business, manufacture, storage, transportation, handling or sale of any of the said materials. They shall also have power to open any container or package containing or supposed to contain any of the said materials, and to take therefrom samples for analysis. The official methods and recommendations of the Association of Official Agricultural Chemists as to sampling and analyzing shall be used in administering this article. (1941, c. 275, s. 6.)

§ 106-87. Deficiencies; refunds to consumers.—Should any of the materials coming under this article be found, by procedures authorized thereunder,

to be deficient in the constituents as claimed by the manufacturer or vendor thereof, said manufacturer or vendor, upon being officially notified of such deficiency by the Commissioner of Agriculture, shall, within ninety days following such notification, make refunds to the consumers of the deficient materials as follows: In case of "agricultural liming material" or "agricultural liming material with potash", excepting potash deficiency of the latter, if the deficiency be five per cent or more, there shall be refunded an amount equal to three times the value of such deficiency. In case of "potash" deficiency in "agricultural liming material with potash," there shall be refunded an amount equal to three times the value of the deficiency, if such deficiency is in excess of forty points (which shall mean 0.40 of one per cent) on goods guaranteed four per cent; fifty points (which shall mean 0.50 of one per cent) on goods that are guaranteed five per cent up to and including eight per cent; and sixty points (which shall mean 0.60 of one per cent) on goods guaranteed nine per cent and up to and including twenty per cent; and one hundred points (which shall mean 1.00 per cent) on goods guaranteed over twenty per cent; and in case of land plaster, for deficiencies in excess of one per cent, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture for deposit with the State Treasurer to the credit of the Department of Agriculture, where said refund shall be held for payment to the proper consumer upon order of said Commissioner. Where the consumer to whom the refund is due cannot be found within a period of two years, such refund shall, after said period, revert to the Department of Agriculture for expenditure by said Commissioner in promoting the agricultural program of the State. (1941, c. 275, s. 7.)

§ 106-88. Violations and penalties.—Any person or persons selling, offering or exposing for sale in this State any of the materials covered in this article, without first having registered said materials, paid the fees required, secured the required license, and otherwise complied with the requirements of this article; or who shall have caused to be submitted, or to be associated with said registrations or materials, false, fraudulent, or misleading statements; or who shall have caused to be incorporated into said materials any substances which shall be harmful to plants or plant growth; shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for the first offense and not less than one hundred dollars for each subsequent offense. (1941, c. 275, s. 8.)

§ 106-89. Certified analysis as evidence.—In the trial of any suit or action wherein there is called in question the value of composition of any of the materials covered by this article, a certified statement of the analysis made by the chemists of the Department of Agriculture shall be admissible as prima facie evidence of the content, value, or composition of said materials. (1941, c. 275, s. 9.)

§ 106-90. Revocation of licenses; seizure of materials.—The Commissioner of Agriculture is hereby authorized to revoke any license and require forfeit of fees paid under such license when it is ascertained that the registration upon which said license was issued has given false information in its statement relative to the kind, quality, composition or fineness of the materials sold, or offered for sale, under the provisions of this article; and to seize and withhold from sale or distribution any such materials where it is shown that they are being dispensed in violation of said article. (1941, c. 275, s. 10.)

§ 106-91. Regulations and standards.—The Commissioner of Agriculture, under the authority of the Board of Agriculture, is further empowered to prescribe and enforce such reasonable rules and regulations relating to the sale of

the materials covered in this article as are consistent with the purpose of the article and are deemed necessary to carry into effect its full intent and meaning; and, conjointly with the State Board of Agriculture and the director of the North Carolina Experiment Station, to formulate and prescribe such definitions and standards as may be required for said purpose. (1941, c. 275, s. 11.)

§ 106-92. Construction of article.—Nothing in this article shall be construed to restrict or avoid sales or exchanges of the materials coming under this article to each other by importers, manufacturers or manipulators who mix said materials for sale, or as preventing the free and unrestricted shipments of said materials to manufacturers or manipulators who have registered their brands as required by the provisions of this article. (1941, c. 275, s. 12.)

ARTICLE 9.

Commercial Feeding Stuffs.

§ 106-93. Packages to be marked with statement of specified particulars; methods of analysis.—Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this State shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trademark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates: Provided, that minerals and other materials not valuable for their protein and fat content shall be labeled in accordance with rules and regulations promulgated by the State Board of Agriculture. The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to the methods prescribed by the Association of Official Agricultural Chemists. In the absence of methods prescribed by said Association, the Commissioner shall prescribe the methods of analysis. (1909, c. 149, s. 1; C. S., s. 4724; 1949, c. 638, s. 1.)

Editor's Note. — The 1949 amendment struck out the latter part of the former section and inserted in lieu thereof the proviso and the last two sentences.

Implied Warranty. — Under the provisions of this section and sections 106-95 and 106-100, there is an implied warranty

that foodstuff sold for cattle is reasonably fit for the purpose intended, and that it is not composed of harmful or deleterious substances that will produce injury or death to the cattle fed therewith. *Poovy v. International Sugar Co.*, 191 N. C. 722, 133 S. E. 12 (1926).

§ 106-94. Weight of packages prescribed.—All concentrated commercial feeding stuffs, except that in bags or packages of five pounds or less, shall be in standard weight bags or packages of ten, twenty-five, fifty, seventy-five, one hundred, one hundred and twenty-five, one hundred and fifty, one hundred and seventy-five, and two hundred pounds. (1909, c. 149, s. 1; C. S., s. 4725; 1943, c. 225, s. 1.)

Editor's Note.—The 1943 amendment inserted the exception clause and added "ten" to the list of weights. Section 6 of the amendatory act, which also amended §§ 106-96, 106-102 and 106-106 and inserted §§ 106-97.1 and 106-102.1, provides that the

act shall not repeal or nullify any of the provisions of the Uniform Weights and Measures Act [§§ 81-1 et seq.], or any rules and regulations promulgated pursuant thereto.

§ 106-95. "Commercial feeding stuffs" defined.—The term "commercial feeding stuffs" shall be held to include the so-called mineral feeds and all feeds used for livestock, domestic animals and poultry, except cottonseed hulls,

whole unground hays, straws and corn stover, when the same are not mixed with other materials, nor shall it apply to whole unmixed, unground and uncrushed grains or seeds when not mixed with other materials. (1909, c. 149, s. 2; C. S., s. 4726; 1939, c. 354, s. 1; 1949, c. 638, s. 2.)

Editor's Note.—The 1949 amendment rewrote this section as changed by the 1939 amendment.

§ 106-96. Copy of statement and sample filed for registration.—Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguishing name or trademark, file for registration with the Commissioner of Agriculture a copy of the statement required in § 106-93, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. For each and every statement so filed, there shall be paid to the Commissioner of Agriculture an annual registration fee of one dollar (\$1.00), payable at the time of registration: Provided, that for each brand of commercial feeding stuff marketed in packages of five pounds or less, there shall be paid to the Commissioner of Agriculture an annual registration fee of twenty-five dollars (\$25.00): Provided, further, that manufacturers, importers, jobbers, agents, or sellers who pay the twenty-five dollars (\$25.00) registration fee prescribed by the above provision on any feeding stuff, shall not be liable for the tonnage fee, prescribed by § 106-99, on the feeding stuff on which said twenty-five dollar (\$25.00) fee is paid.

All registration fees are payable at the time of registration, and shall be payment in full of registration fees through December thirty-first of the year in which paid. All such feeds must be registered anew each year. (1909, c. 149, s. 3; C. S., s. 4727; 1939, c. 354, s. 2; 1943, c. 225, s. 2.)

Editor's Note. — The 1939 amendment added the second sentence as it appeared prior to the 1943 amendment, which added the provisos thereto. The latter amendment also added the second paragraph. See note to § 106-94.

§ 106-97. Agent released by statement of manufacturer.—When a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs files a statement, as required by § 106-96, no agent or seller of such manufacturer, importer, or jobber, shall be required to file such statement. (1909, c. 149, s. 4; C. S., s. 4728.)

§ 106-97.1. Registrants required to furnish Commissioner with statement of tonnage sold in this State.—Each person registering feeding stuff under this article shall furnish the Commissioner of Agriculture with a written statement of the tonnage of each grade or brand of feed sold by him in this State. This statement shall include all sales for the periods from January first to and including December thirty-first of each year. If the above statement is not made within thirty days from the date of notification by the Commissioner, he may, in his discretion, invoke a penalty of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) on, or cancel the registration of, any person failing to so comply. The Commissioner, however, in his discretion, may grant a reasonable extension of time. (1943, c. 225, s. 3.)

Cross Reference.—See note to § 106-94.

§ 106-98. Power to refuse or to cancel registration.—The Commissioner of Agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the

standards and rulings adopted by the Board of Agriculture. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture shall have the power to cancel such registration. (1909, c. 149, s. 5; C. S., s. 4729.)

§ 106-99. Inspection tax on feeding stuffs; tax tags; reporting system.—Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined in this article, shall pay to the Commissioner of Agriculture an inspection tax of twenty-five cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State, and shall affix to or accompany each car shipped in bulk, and to each bag, barrel, or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the Commissioner of Agriculture stating that all charges specified in this section have been paid: Provided, whenever any concentrated commercial feeding stuff, as hereinabove defined, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamps to cover same: Provided, that the inspection tax of twenty-five cents per ton shall not apply to whole seeds and grains when not mixed with other materials. It is further provided that, upon demand, said inspection tags or stamps shall be redeemed by the Department issuing said tags or stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said tags or stamps shall be returned for redemption within the time fixed by the Board of Agriculture: Provided further, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale. The Commissioner of Agriculture is hereby empowered to prescribe the form of such tax tags or stamps.

Any manufacturer, importer, jobber, firm, corporation or person who distributes concentrated commercial feeding stuffs in this State may make application to the Commissioner of Agriculture for a permit to report the tonnage of feeding stuffs sold and pay the inspection tax of twenty-five cents (25c) per ton as hereinbefore mentioned, as the basis of said report, in lieu of affixing or furnishing inspection fee tags or stamps. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of feeding stuffs sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the tonnage statement. The tonnage report shall be monthly and the inspection fee shall be due and payable monthly, on the tenth of each month, covering the tonnage and kind of commercial feeding stuffs sold during the past month. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the

Commissioner cash in the amount of one thousand dollars (\$1000.00) or securities acceptable to the Commissioner of a value of at least one thousand dollars (\$1000.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3.)

Editor's Note. — The 1939 amendment substituted "twenty-five" for "twenty" at two places in the first paragraph with reference to amount of tax, and the 1949 amendment added the second paragraph.

Feeding Stuff below Grade and without Tags.—Upon a purchase of feeding stuff, below grade and without tags, it is the duty of the purchaser to do what he rea-

sonably can to lessen his loss, and the measure of his damages is the difference in value of the goods as it actually is and which it should have been under his contract, and such other expenses as were actually incurred by him in handling it. *Jennette & Co. v. Hay, etc., Co.*, 158 N. C. 156, 73 S. E. 884 (1912).

§ 106-100. Sale without complying with article; sale of feeding stuff below grade; forfeiture; release from forfeiture.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this State, any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of this article, and the lot of feeding stuff in question shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, and the proceeds from said sales shall be covered into the State treasury for the use of the Department executing the provisions of this article. The Commissioner of Agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the Department of Agriculture in any proceedings connected with such seizure and withdrawal. (1909, c. 149, s. 7; C. S., s. 4731.)

§ 106-101. Method of seizure and sale on forfeiture.—Such seizure and sale shall be made under the direction of the Commissioner of Agriculture or an officer of the Department of Agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days' advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. (1909, c. 149, s. 7; C. S., s. 4732.)

§ 106-102. Collection and analysis of sample.—The Commissioner of Agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this State under the provisions of this article. Said sample, not less than

one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the Department of Agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The Department of Agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in § 106-93, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample differs within reasonable limits only from the statement (prescribed in § 106-93) appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Rev., s. 3808; 1909, c. 149, s. 9; C. S., s. 4733; 1943, c. 225, s. 4.)

Editor's Note.—The 1943 amendment rewrote the last proviso. See note to § 106-94.

§ 106-102.1. Misbranding; penalty; payable to purchaser; value of feed; deficiencies of weight.—If the analysis shall show that any feed bearing a guaranteed analysis of twenty-four per cent protein or less falls as much as five per cent (five per cent of the guarantee) and not more than ten per cent (ten per cent of the guarantee) below the guaranteed analysis in protein, twice the value of such deficiency shall be assessed against the manufacturer or guarantor. If the feed shall fall over ten per cent below the guaranteed analysis in protein, the penalty assessed shall be three times the value of the deficiency.

If the analysis shall show that any feed bearing a guaranteed analysis of more than twenty-four per cent protein falls as much as two per cent (two per cent of the guarantee) and not more than four per cent (four per cent of the guarantee) below the guaranteed analysis in protein, twice the value of such deficiency shall be assessed against the manufacturer or guarantor. If the feed shall fall over four per cent below the guaranteed analysis in protein, the penalty assessed shall be three times the value of the deficiency. If the analysis shall show that any feed is deficient in fat by more than fifty hundredths per cent (one-half unit), the penalty shall be twice the value of the deficiency.

If the fiber content of any lot of feed shall exceed the maximum guarantee by more than two per cent (two units), a penalty shall be assessed equal to ten per cent of the value of the feed.

If the microscopic analysis reveals that the feed is mislabeled, the Commissioner may, in his discretion, assess a penalty equal to ten per cent of the value of the feed.

The minimum penalty under any of the foregoing provisions shall in no case be less than three dollars (\$3.00), regardless of the value of the deficiency.

Within sixty days from the date of notice by the Commissioner to the manufacturer, guarantor, dealer, or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall thereafter be found to be

payable to consumers on lots of feed against which penalties were assessed shall be paid from said fund on order of the Commissioner of Agriculture. After a twelve months' period such sums as have not been paid to consumers on lots of feed against which said penalties were assessed may be used by the Commissioner of Agriculture as he may see fit for the purpose of promoting the agricultural program of the State.

The approximate retail value per pound and per unit of the various guarantees shall be computed by the Commissioner and be used to establish the relative value of the feed sold or offered for sale in this State. The Commissioner is authorized to furnish, upon application, such relative values to any persons engaged in the manufacture or sale of feed in this State.

If any feed is found by an inspector of the Department of Agriculture to be short in weight, the manufacturer or guarantor of said feed shall, within ten days of official notice from the Department of Agriculture, make good such deficiency and pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner, in his discretion, may allow reasonable tolerances for short weight due to loss through handling and transporting. (1943, c. 225, s. 5.)

Cross Reference.—See note to § 106-94.

§ 106-103. Rules and standards to enforce article.—The Board of Agriculture is empowered to adopt standards for concentrated commercial feeding stuffs and such rules and regulations as may be necessary for the enforcement of this article, and a violation of such rules and regulations shall be a misdemeanor. (Rev., s. 3808; 1909, c. 149, s. 9; C. S., s. 4734.)

§ 106-104. Sales without tag; misuse of tag; counterfeiting tag.—Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this State any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps, labels, or tags as required by the provisions of this article, or who shall use the required tax stamps, labels, or tags a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent, or dealer who shall counterfeit or use a counterfeit of such tax stamps, labels, or tags, shall be guilty of a violation of the provisions of this article. (1909, c. 149, s. 10; C. S., s. 4735.)

§ 106-105. Refusal to comply with the article or hindering its enforcement.—Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of such provisions. (1903, c. 325, s. 8; Rev., s. 3827; 1909, c. 149, s. 11; C. S., s. 4736.)

§ 106-106. Violation of article a misdemeanor.—Any manufacturer, importer, jobber, agent or dealer who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, in the discretion of the court. (1909, c. 149, s. 12; C. S., s. 4737; 1943, c. 225, s. 5a.)

Editor's Note.—The 1943 amendment rewrote this section. See note to § 106-94.

§ 106-107. Notice of charges to accused; hearing before Commissioner.—Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer, or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. (1909, c. 149, s. 13; C. S., s. 4738.)

§ 106-108. **Commissioner to certify facts to solicitor and furnish analysis.**—If it appears that any of the provisions of this article have been violated the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. (1909, c. 149, s. 13; C. S., s. 4739.)

§ 106-109. **Solicitor to prosecute violations.**—It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases prescribed. (1909, c. 149, s. 14; C. S., s. 4740.)

§ 106-110. **Certificate of analyst as evidence.**—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 149, s. 13; C. S., s. 4741.)

ARTICLE 10.

Mixed Feed Oats.

§ 106-111. **Unlawful to sell mixed feed oats unless ground.**—It shall be unlawful for any person, firm, or corporation to sell, or offer or expose for sale or distribution within the State the feeding material known as "mixed feed oats" unless it first be ground. The duty of enforcing this section and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. The Department of Agriculture shall adopt such rules and regulations as may be necessary for the efficient enforcement of this section. Every violation of the provisions of this section shall be deemed a misdemeanor and punishable by a fine not to exceed one hundred dollars. (1931, c. 106.)

ARTICLE 11.

Stock and Poultry Tonics.

§ 106-112. **Application and affidavit for registration.**—Before any condimental, patented, proprietary or trademarked "stock or poultry tonic," "regulator," "conditioner," or "vermicide" or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial" or other "medicinal" properties for domestic animals or poultry, either is sold or offered for sale in this State, by sample or otherwise, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale shall file with the Commissioner of Agriculture an application for registration on a form to be furnished by said Commissioner, the execution of which shall be sworn to before a notary public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand, or trademark under which said preparation or preparations will be sold, and a statement of the ingredients of said preparation, together with a labeled package of said preparation showing claims made for same, which labeling shall not be changed during the year for which the registration is made without consent of the Commissioner of Agriculture. The Commissioner of Agriculture shall decline to register a preparation that is injurious to the health of domestic animals or poultry, or that conflicts with the requirements of the North Carolina Food, Drug and Cosmetic Law, or that the name, trademark, or label under which the preparation is sold may mislead or deceive the purchaser in any way, or that any statements, designs, or devices on the label or package regarding the substances contained therein are

not true and correct, or that any claims made for the feeding, condimental, tonic, or medicinal value are false or misleading in any particular. (1909, c. 556, s. 1; C. S., s. 4742; 1943, c. 226, s. 1.)

Editor's Note. — The 1943 amendment rewrote this section.

Note Uncollectible for Noncompliance. —Where a note is given in consideration of the sale of a foodstuff or "conditioner" coming within the provisions of this section, requiring the seller to file with the Commissioner of Agriculture a statement of his purpose, a duly verified certificate as to its qualities, for registration, with a

labeled package, section 106-113 requiring a fee for registration, section 106-114 making a noncompliance a misdemeanor, and section 106-119 declaring the legislation designed to protect the public from deception and fraud, and these requirements have not been complied with by the seller, the note is uncollectible against the purchaser or maker. *Miller v. Howell*, 184 N. C. 119, 113 S. E. 621 (1922).

§ 106-113. Registration fee.—For the expense incurred in registering, inspecting, and analyzing "stock or poultry tonics," "regulators," "conditioners," "vermicides," and similar preparations defined in § 106-112, a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the Commissioner of Agriculture during the month of January in each year, said fees to be used by the Commissioner of Agriculture for executing the provisions of this article. (1909, c. 556, s. 2; C. S., s. 4743; 1943, c. 226, s. 2.)

Editor's Note. — The 1943 amendment made this section applicable to vermicides.

§ 106-114. Sale of unregistered tonics a misdemeanor.—Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trademarked "stock or poultry tonic," "regulator," "conditioner," "vermicide," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by § 106-112, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars (\$50.00) for the first offense and in the sum of one hundred dollars (\$100.00) for each subsequent offense. (1909, c. 556, s. 3; C. S., s. 4744; 1943, c. 226, s. 3.)

Editor's Note. — The 1943 amendment made this section applicable to vermicides.

§ 106-115. Notice of violation charged; hearing before Commissioner.—Whenever the Commissioner of Agriculture becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. (1909, c. 556, s. 4; C. S., s. 4745.)

§ 106-116. Issuance of "stop sale" orders by Commissioner; confiscation or sale of products.—If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture or his authorized representative is hereby authorized to issue a "stop sale" order which shall prohibit further sale of any product offered in violation of this article until the law has been complied with or said violation has otherwise been legally disposed of. The Commissioner of Agriculture or his authorized representative is further authorized to confiscate and seize any product sold or offered for sale in violation of this article and shall have the authority to sell said product if it can be made to conform to this article or to destroy same if it cannot be made to conform with this article. Such sale shall be made at the courthouse door in the

county in which the seizure is made, after 30 days' advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name of the product, the quantity, why seized and offered for sale. The proceeds from such sale, after deducting the necessary expense of said sale, shall be deposited with the State Treasurer for the use of the Department of Agriculture. (1909, c. 556, s. 4; C. S., s. 4746; 1941, c. 199, s. 1.)

Editor's Note.—Prior to the 1941 amendment this section related to duty of the Commissioner to notify solicitor of violation of article and to furnish analysis.

§ 106-117. Prosecution of violations.—If any person, firm or corporation shall violate any provision of this article, it shall be the duty of the Commissioner of Agriculture or his authorized representative to cause proceedings to be commenced and prosecuted in a court of competent jurisdiction in the district where the violation occurred. (1909, c. 556, s. 5; C. S., s. 4747; 1941, c. 199, s. 2.)

Editor's Note.—Prior to the 1941 amendment this section provided that the solicitor should prosecute violations.

§ 106-118. Certificate of analyst as evidence.—In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 556, s. 4; C. S., s. 4748.)

§ 106-119. Purpose of article.—This article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this State, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trademarked "stock or poultry tonics," "regulators," "conditioners," "vermicides," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products. (1909, c. 556, s. 6; C. S., s. 4749; 1943, c. 226, s. 4.)

Editor's Note.—The 1943 amendment made this section applicable to vermicides.

ARTICLE 12.

Food, Drugs and Cosmetics.

§ 106-120. Title of article.—This article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 400.

§ 106-121. Definitions.—For the purpose of this article:

(a) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture, and the term "Board" means the Board of Agriculture.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (2) arti-

cles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clauses (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(e) The term "device," except when used in paragraph (k) of this section and in §§ 106-122, subsection (j), 106-130, subsection (f), 106-134, subsection (c) and 106-137, subsection (c), means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such terms shall not include soap.

(g) The term "official compendium" means the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, official National Formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a re-

sult of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment.

(q) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.). (1939, c. 320, s. 2.)

§ 106-122. Certain acts prohibited.—The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of §§ 106-131 or 106-135.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or refusal to permit the taking of a sample, as authorized by § 106-140.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of § 106-125.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 106-135, or that such drug complies with the provisions of such section. (1939, c. 320, s. 3.)

This section applies to adulteration of foods kept for sale. It has no application, therefore, to a controversy involving cer-
tain preservation powders for fruits. *Smith v. Alphin*, 150 N. C. 425, 64 S. E. 210 (1909).

§ 106-123. Injunctions restraining violations.—In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of § 106-122; irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ 106-124. Violations made misdemeanor.—(a) Any person who violates any of the provisions of § 106-122 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment in the county jail for not more than six months or a fine of not more than two hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment in the county jail for not more than twelve months, or a fine of not more than four hundred dollars, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 106-122, subsection (a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the State of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5.)

Civil Liability.—Impure and dangerous tion for damages. *Ward v. Sea Food Co.*,
articles of food, causing death of purchaser, 171 N. C. 33, 87 S. E. 958 (1916).
subjects the seller to liability in a civil ac-

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.—(a) Whenever a duly authorized agent of the Department of Agriculture finds or has probable cause to believe, that any food, drug, device or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the judge of any recorder's, county, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agri-

culture that the article is no longer in violation of this article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6.)

§ 106-126. Prosecutions of violations.—It shall be the duty of any solicitor of a recorder's county, or superior court to whom the Commissioner of Agriculture reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such solicitor for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner of Agriculture or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding. (1939, c. 320, s. 7.)

§ 106-127. Report of minor violations in discretion of Commissioner.—Nothing in this article shall be construed as requiring the Commissioner of Agriculture to report for the institution of proceedings under this article, minor violations of this article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ 106-128. Establishment of reasonable standards of quality by Board of Agriculture.—Whenever in the judgment of the Board of Agriculture such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by section four hundred one (401) of the Federal Act. (1939, c. 320, s. 9.)

Editor's Note.—See *Smith v. Alphin*, 150 N. C. 425, 64 S. E. 210 (1909).

§ 106-129. Foods deemed to be adulterated.—A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 106-132; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased,

unwholesome or injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin: Provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (1939, c. 320, s. 10.)

Editor's Note.—See *Smith v. Alphin*, 150 N. C. 425, 64 S. E. 210 (1909).

§ 106-130. Foods deemed misbranded.—A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(f) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 106-128, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided by § 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by § 106-128, and it falls below the standard of fill

of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board of Agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact: Provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture: Provided, further, that for the purpose of complying with the provisions of this article, as it pertains to bottled soft drinks, either the bottle crown or the crown together with the blown-in-the-bottle or annealed-to-the-bottle statements, now in usual and common use in this State, shall be deemed sufficient labeling and no paper label shall be necessary. (1939, c. 320, s. 11.)

§ 106-131. Permits governing manufacture of foods subject to contamination with microorganisms. — (a) Whenever the Commissioner of Agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality in this State, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the Commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner of Agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Agriculture shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner of Agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and

denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 106-132. Regulations by Board of Agriculture as to use of deleterious substances.—Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of § 106-129, subsection (a); but when such substance is so required or cannot be so avoided, the Board of Agriculture shall promulgate regulations limiting the quantity therein or thereon to such extent as the Board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of clause (2) of § 106-129, subsection (a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1), subsection (a), § 106-129. In determining the quantity of such added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (1939, c. 320, s. 13.)

§ 106-133. Drugs deemed to be adulterated.—A drug or device shall be deemed to be adulterated:

(a) (1) If it consists in whole or in part of any filthy, putrid or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified by the United States Department of Agriculture.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed by the United States Department of Agriculture. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor. (1939, c. 320, s. 14.)

§ 106-134. **Drugs deemed misbranded.**—A drug or device shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(h) If it has been found by the Department of Agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the

Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) If (1) it is a drug sold at retail and contains any quantity of amidopyrine, barbituric acid, cinchophen, dinitrophenol, sulfanilamide, pituitary, thyroid, or their derivatives, or (2) it is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian; unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. Such prescription shall not be refilled except on the specific authorization of the prescribing physician, dentist or veterinarian.

Nothing in this subsection shall apply to a compound, mixture, or preparation containing salts or derivatives of barbituric acid which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this subsection if:

(1) Such compound, mixture, or preparation contains a sufficient quantity of another drug or drugs, in addition to such salts or derivatives, to cause it to produce an action other than its hypnotic or somnifacient action; or

(2) Such compound, mixture, or preparation is intended for use as a spray or gargle or for external application and contains, in addition to such salts or derivatives, some other drug or drugs rendering it unfit for internal administration.

(1) A drug sold on a written prescription signed by a member of the medical, dental or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to a diagnosis by mail) shall be exempt from the requirements of this section if—(1) such member of the medical, dental or veterinary profession is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. (1939, c. 320, s. 15; 1949, c. 370.)

Editor's Note.—The 1949 amendment rewrote subsection (k).

§ 106-135. Regulations for sale of new drugs. — (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has become effective under section five hundred and five of the Federal Act, or (2) when not subject to the Federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner of Agriculture an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the Commissioner may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) (2) of this section shall

become effective on the sixtieth day after the filing thereof, except that if the Commissioner of Agriculture finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply—(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs provided the drug is plainly labeled "For investigational use only"; or (2) to a drug sold in this State at any time prior to the enactment of this article or introduced into interstate commerce at any time prior to the enactment of the federal act; or (3) to any drug which is licensed under the Virus, Serum, and Toxin Act of July first, one thousand nine hundred and two (U. S. C., 1934 ed., Title 42, chapter 4).

(d) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall be exempt from the requirements of this section if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

(e) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner of Agriculture. (1939, c. 320, s. 16.)

Cross Reference.—For the federal Food, Drug, and Cosmetic Act, see 21 U. S. C. A., §§ 301-392.

§ 106-136. Cosmetics deemed adulterated.—A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (1939, c. 320, s. 17.)

§ 106-137. Cosmetics deemed misbranded.—A cosmetic shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity, of the contents in terms of weight, measure, or numerical

count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Board of Agriculture.

(c) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading. (1939, c. 320, s. 18.)

§ 106-138. False advertising.—(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19.)

§ 106-139. Regulations by Board of Agriculture.—(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the Board of Agriculture, except that the Commissioner of Agriculture is hereby authorized to promulgate regulations under § 106-131. The Board is hereby authorized to make the regulations promulgated under this article conform, insofar as practicable with those promulgated under the Federal Act.

(b) Hearings authorized or required by this article shall be conducted by the Commissioner of Agriculture or such officer, agent, or employee as the Commissioner may designate for the purpose.

(c) A representative duly designated by the North Carolina Board of Pharmacy, and a representative duly designated by the North Carolina Board of Health shall sit with the Commissioner of Agriculture, or his duly authorized agent, and assist in all hearings conducted in accordance with the provisions of § 106-134, subsections (d), (f), (g), and (h); and in all cases of hearings and/or investigations, under § 106-134, subsections (d), (f), (g), and (h) and under § 106-135, subsections (a), (b), and (d), transcripts of all findings and recommendations shall be submitted to the Board of Pharmacy and the Board of Health for approval.

(d) Before promulgating any regulation contemplated by §§ 106-128; 106-130, subsection (j); 106-131; 106-134, subsections (d), (f), (g), and (h), or 106-138, subsection (b), the Commissioner of Agriculture shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so

promulgated shall become effective on a date fixed by the Board of Agriculture (which date shall not be prior to ninety days after its promulgation, except such regulations as may be promulgated under § 106-131, which regulations shall become effective on the date of promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the Board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e) All proposed definitions and standards for drugs shall, prior to promulgation by the Board of Agriculture be submitted to the Board of Pharmacy and the Board of Health for approval. (1939, c. 320, s. 20.)

§ 106-140. Further powers of Commissioner of Agriculture for enforcement of article.—The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose: (1) Of inspecting such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, to determine if any of the provisions of this article are being violated, and (2) to secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the Commissioner of Agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated. (1939, c. 320, s. 21.)

§ 106-141. Appointment of inspectors.—(a) In the appointment of any drug inspector in carrying out the provisions of this article, the Commissioner of Agriculture shall confer with the North Carolina Board of Pharmacy.

(b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this article through officers and employees of the Department or through any health, food or drug officer or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture the arrangements for such examinations and investigations shall be approved by the directing head of such agency. (1939, c. 320, s. 22.)

§ 106-142. Publication of reports of judgments, decrees, etc.—(a) The Commissioner of Agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The Commissioner of Agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department. (1939, c. 320, s. 23.)

§ 106-143. Article construed supplementary.—Nothing in this article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the State Board of Health, or any local health department, in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, fin fish, or other foods, or food products, or the production, handling, or processing thereof; but this article shall be construed to be in addition thereto. (1939, c. 320, s. 24½.)

§ 106-144. **Exemptions.**—Meats and meat products subject to Federal Meat and Inspection Act approved March four, one thousand nine hundred and seven, as amended, are exempted from the provisions of this article so long as such meats and meat products remain in possession of the processor. (1939, c. 320, s. 24 2/3.)

§ 106-145. **Effective date.**—This article shall be in full force and effect from and after January first, one thousand nine hundred and forty: Provided, that the provisions of § 106-139 shall become effective on April 3, 1939 and thereafter the Commissioner of Agriculture is authorized hereby to conduct hearings, and the Board is authorized to promulgate regulations which shall become effective on and after the effective date of this article as the Board shall direct. (1939, c. 320, s. 25.)

ARTICLE 13.

Canned Dog Foods.

§ 106-146. **Labeling of canned dog food required.**—Every can of dog food sold, offered or exposed for sale within this State shall have printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the net weight of the can (provided, that all canned dog foods shall be in cans of one-half pound, or one pound, or multiples of one pound); the name, brand or trademark under which the article is sold; the name and address of the manufacturer; the name of each and all ingredients of which the article is composed; a guarantee that the contents are wholesome and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, all three constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States. (1939, c. 307, s. 1; 1941, c. 290, s. 1.)

Editor's Note.—The 1941 amendment made provision for cans of one-half pound. Prior to the amendment the percentage of moisture was one of the constituents of

the required statement.

For comment on the 1939 enactment, see 17 N. C. Law Rev. 329.

§ 106-147. **"Canned dog food" defined.**—The term "canned dog food" shall be held to include any article of food, packed in cans or hermetically sealed containers, and used for food for dogs or cats. (1939, c. 307, s. 2.)

§ 106-148. **Registration of copies of labels with Commissioner of Agriculture.**—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this State any canned dog food, shall, for each and every canned dog food bearing a distinguishing name or trademark, file for registration with the Commissioner of Agriculture a copy of the statement required in § 106-146, giving in addition the percentage of moisture contained in said products, and accompany said statement, upon request, by a sealed can containing at least one pound of said dog food. (1939, c. 307, s. 3; 1941, c. 290, s. 2.)

Editor's Note.—The 1941 amendment inserted the provision relating to percentage of moisture.

§ 106-149. **Power of Commissioner of Agriculture to refuse or revoke registration upon failure to comply with regulations.**—The Commissioner of Agriculture shall have the power to refuse the registration of any canned dog food under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the Board of Agriculture. Should any canned dog foods be

registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture shall have the power to cancel such registration. (1939, c. 307, s. 4.)

§ 106-150. Annual registration fee; inspection tax; stamps; reporting system.—Upon registration of each brand or kind of dog food, the manufacturer, agent or distributor thereof shall pay to the Commissioner of Agriculture an annual registration fee of five dollars (\$5.00) payable at the time of registration, and thereafter on or before the last day of December of each year. Furthermore, each such manufacturer, agent or distributor shall pay to the Commissioner of Agriculture an inspection tax at the rate of two cents for each carton of forty-eight cans and shall affix to each such carton a stamp to be furnished by the Commissioner of Agriculture stating that all charges specified in this section have been paid. Said stamps shall be redeemed by the Department issuing said stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said stamps shall be returned for redemption within the time fixed by the Board of Agriculture.

Any manufacturer, importer, jobber, firm, corporation or person who distributes canned dog food in this State may make application for a permit to report the quantity of canned dog food sold and pay the inspection tax at the rate of two (2) cents for each carton of forty-eight cans as hereinbefore mentioned, as the basis of said report, in lieu of affixing inspection stamps. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the quantity of canned dog food sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the inspection fee shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the quantity of canned dog food sold during the preceding quarter. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten per cent which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of two hundred fifty dollars (\$250) or securities acceptable to the Commissioner of a value of at least two hundred fifty dollars (\$250) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1939, c. 307, s. 5; 1949, c. 1058, ss. 1, 2.)

Editor's Note. — The 1949 amendment first sentence of the first paragraph, and substituted "December" for "June" in the added the second paragraph.

§ 106-151. Samples for analysis.—The Commissioner of Agriculture, together with his deputies, agents and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels and packages of whatsoever kind used in the manufacture, importation or sale of any canned dog food, and shall have power and authority to open any package containing or supposed to contain any canned dog food, and to take therefrom, in the manner hereinafter prescribed, samples for analysis, upon tender and full payment of the selling price of said sample. The Department of Agriculture is hereby authorized

to publish from time to time in reports or bulletins the results of the analysis of such samples. (1939, c. 307, s. 6.)

§ 106-152. **Adoption of standards, etc.**—The Board of Agriculture is empowered to adopt standards for canned dog foods and such rules and regulations as may be necessary for the enforcement of this article. (1939, c. 307, s. 7.)

§ 106-153. **Confiscation and sale by Commissioner of Agriculture in event of violation.**—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribution in this State any canned dog food, as defined in § 106-147, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any canned dog food which contains substantially a smaller percentage of crude protein or crude fat or a larger percentage of crude fiber or moisture than certified to be contained, or who shall adulterate any canned dog food with foreign substances, of little or no food value, or with injurious substances, shall be guilty of a violation of this article, and the lot of canned dog food in question shall be subject to seizure, condemnation and sale by the Commissioner of Agriculture, and the proceeds from said sales shall be covered into the State treasury for the use of the Department executing the provisions of this article. Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer of the Department of Agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after advertisement in some newspaper published or circulating in such county. The advertisement shall state the brand or name of the goods, the quantity and why seized and offered for sale. The Commissioner of Agriculture, however, may in his discretion release the canned dog food so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the Department of Agriculture in any proceedings connected with such seizure and withdrawal. (1939, c. 307, s. 8.)

§ 106-154. **Failure to use tax stamps or improper use of stamps.**—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribute in this State any canned dog food without having attached thereto or furnished therewith tax stamps, as required by the provisions of this article, or who shall use the required tax stamps a second time to avoid the payment of the tax, or any manufacturer, importer, jobber, agent or dealer who shall counterfeit or use a counterfeit of such tax stamps, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 9.)

§ 106-155. **Failure to comply with requirements.**—Any manufacturer, importer, jobber, agent or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent or dealer or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 10.)

§ 106-156. **Violations made misdemeanor.**—Any manufacturer, importer, jobber, agent or dealer who shall violate any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense, nor more than two hundred dollars for each subsequent offense. (1939, c. 307, s. 11.)

§ 106-157. **Notification by Commissioner as to violations.**—Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer or jobber and dealer, if same be known. Any party so notified shall be

given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture, and if it appears that any of the provisions of this article have been violated the Commissioner of Agriculture shall certify the facts to the solicitor of the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1939, c. 307, s. 12.)

§ 106-158. **Prosecution of violations.**—It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed: Provided, that the provisions of this article shall not apply to any canned dog foods now in the hands or in the stock of any dealer or manufacturer. (1939, c. 307, s. 13.)

ARTICLE 14.

State Inspection of Slaughterhouses.

§ 106-159. **Application for permit.**—Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (1925, c. 181, s. 1.)

§ 106-160. **Investigation of sanitary conditions; issuance of permit.**—It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (1925, c. 181, s. 2.)

§ 106-161. **Municipalities, inspection of meats.**—Municipal corporations shall have power and authority under this article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county. (1925, c. 181, s. 3.)

§ 106-162. **Fees for inspection.**—The officials of municipalities or counties in which such inspection is maintained, shall have full power and authority to fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection charge shall be made within the State. (1925, c. 181, s. 4.)

§ 106-163. **Inspection conducted by veterinarian.**—No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (1925, c. 181, s. 5.)

§ 106-164. Number of permit to identify meats; revocation of permit.—To each establishment complying with the provisions of this article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation. (1925, c. 181, s. 6.)

§ 106-165. Carcasses marked when inspected.—All meat carcasses inspected and passed in accordance with this article shall be branded with a rubber stamp bearing the number of the establishment and the words "N. C. Inspected and Passed." (1925, c. 181, s. 7.)

§ 106-166. Rules and regulations for inspection; power of Commissioner.—The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this article. (1925, c. 181, s. 8.)

§ 106-167. Failure of butchers to keep record misdemeanor.—If any butcher shall fail to keep a book of registration and register the ear-mark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars for each offense: Provided, this shall apply only to the counties of Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Halifax, Harnett, Johnston, Jones, Martin, Northampton, Orange, Pitt, Richmond, Rockingham, Warren, Wayne and Wilson, and Warsaw township in Duplin County. (1889, c. 318; 1891, cc. 38, 557; 1893, c. 116; 1895, c. 363; 1903, c. 82; 1905, c. 31; Rev., s. 3803; 1909, c. 865, s. 1; C. S., s. 5099.)

§ 106-168. Local: Sales of calves for veal.—It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this section shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars nor more than thirty dollars, or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense.

This section shall apply to the following counties only: Alamance, Alexander, Ashe, Cherokee, Clay, Franklin, Gaston, Lee, McDowell, Madison, Mitchell, Robeson, Rutherford, Sampson, Wake and Wilson. (Ex. Sess. 1913, c. 80; 1915, c. 2; 1917, c. 93; Pub. Loc. 1917, cc. 299, 470; 1921, c. 85; 1925, c. 11; Pub. Loc. 1927, c. 143.)

Local Modification. — Alamance: Pub. Loc. 1913, c. 616; Pub. Loc. 1917, c. 391; Alexander: Pub. Loc. 1917, c. 180; Alleghaney: Pub. Loc. 1927, c. 473; Anson: Pub. Loc. 1927, c. 422; Avery: Pub. Loc. 1927, c. 143; Durham: 1915, c. 155; Lincoln: Pub. Loc. 1919, c. 159; Haywood, Macon, Swain, Graham and Jackson: Pub. Loc. 1927, c. 472; Watauga: Pub. Loc. 1927, c. 473; Wilkes: Pub. Loc. 1913, c. 731; Ex. Sess. 1921, c. 12.

ARTICLE 15.

Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. Inspection; meat stamped as approved or condemned.—All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than one thousand beef cattle are slaughtered per annum, or more than ten thousand hogs or swine are slaughtered per annum, or more than five hundred sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plant be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection—Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Ex. Sess. 1924, c. 11, s. 1.)

Cross Reference.—As to veterinaries, licensing, etc., generally, see §§ 90-179 et seq.

Editor's Note.—For a discussion of meat inspection, the right to destroy, due proc-

ess of law, and damages for the destruction of meat which was really fit for human consumption, see 3 N. C. Law Rev. 27. The act is summarized in 3 N. C. Law Rev. 149.

§ 106-170. Fees for inspection.—The charges for said inspection shall be as follows: Twenty-five cents for each and every beef cattle or cow inspected; ten cents for each and every hog inspected, and ten cents for each and every sheep inspected; ten cents for each and every veal calf inspected; no further inspection shall be necessary within the State except such inspection as is provided for in §§ 106-120 to 106-145. No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Ex. Sess. 1924, c. 11, s. 2; 1925, c. 311.)

§ 106-171. Veterinary not available; who to inspect.—Should no regularly licensed veterinary surgeon be available for the purposes of this article, then the duties provided herein to be performed by said inspector shall be performed by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Ex. Sess. 1924, c. 11, s. 3.)

§ 106-172. Collection of fees; remuneration of inspector.—The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located; said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same; the salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Ex. Sess. 1924, c. 11, s. 4.)

§ 106-173. **Slaughterhouses, etc., under federal inspection, exempt from provisions of State inspection laws.**—The provisions of §§ 106-159 to 106-172 shall not be applicable to any slaughterhouse or meat packing plant, or any person, firm or corporation engaged in the business of the operation thereof, where such slaughterhouse or meat packing plant is operated under federal inspection pursuant to the provisions of the Meat Inspection Act of the United States, approved March 4, 1907, as amended. (1939, c. 329.)

ARTICLE 15A.

Meat Grading Law.

§ 106-173.1. **Short title.**—The short title of this article shall be “The North Carolina Meat Grading Law.” (1951, c. 1030, s. 1.)

§ 106-173.2. **Definitions.**—For the purpose of this article, the following words, names and terms shall be construed respectively as follows:

(a) “Plant” means any person, firm or corporation engaged in slaughtering, packing or processing meat.

(b) “Distributor” means any person, firm or corporation engaged in selling, handling or distributing meat.

(c) “Plant or distributor’s permit” means authority granted by the Commissioner to produce, handle, sell or distribute meat which is graded according to the provisions of this article.

(d) “Grader’s permit” means authority granted by the Commissioner to any person to grade meat in any plant or for any distributor holding a plant or distributor’s permit.

(e) “Grader” means any person holding a grader’s permit.

(f) “Meat” means beef, lamb or pork.

(g) “Commissioner” means Commissioner of Agriculture of North Carolina. (1951, c. 1030, s. 2.)

§ 106-173.3. **Program inaugurated.**—The Department of Agriculture shall inaugurate and conduct a program for the grading of meat which is slaughtered, processed or distributed in this State. (1951, c. 1030, s. 3.)

§ 106-173.4. **Program shall be voluntary.**—No plant or distributor is required to participate in this program, but any plant or distributor may participate so long as said plant or distributor meets the requirements for a permit as provided by this article and continues to comply with those and other requirements which may be promulgated by the Board of Agriculture. (1951, c. 1030, s. 4.)

§ 106-173.5. **Issuance of plant or distributor’s permits.**—(a) Any plant which produces satisfactory evidence to the Commissioner that it holds a grade-A health rating by the North Carolina Department of Public Health, both as to its plant proper and surrounding premises, and that it has the facilities to provide for both ante and post-mortem inspection of meat by a veterinarian or some other person acting under the supervision of a veterinarian, shall, upon application to the Commissioner, and the payment of a fee of one dollar (\$1.00), be issued a plant or distributor’s permit to grade meat as provided by this article.

(b) Any distributor who produces satisfactory evidence to the Commissioner that the meat which is handled by him is slaughtered, processed or produced under conditions which would satisfy the requirements set out in subsection (a) of this section shall, upon the payment of one dollar (\$1.00), be issued a plant or distributor’s permit to grade meat as provided by this article. (1951, c. 1030, s. 5.)

§ 106-173.6. **Revocation of plant or distributor’s permit.**—Any plant or distributor’s permit may be revoked or suspended by the Commissioner if the

holder of such permit fails to continue to comply with the requirements for obtaining such permit, or any other rules, regulations and standards of the Department of Agriculture or any law of this State relating to the handling of meat, but no permit shall be revoked without due notice to the holder thereof and an opportunity for the holder to be heard. (1951, c. 1030, s. 6.)

§ 106-173.7. Grader's permits.—A grader's permit, subject to the provisions of this article shall be issued by the Commissioner when sufficient proof is presented to him to satisfy him that the person applying for such permit is of good moral character and has had sufficient training and experience to qualify him to grade meat, and when such applicant has paid to the Department of Agriculture the sum of one dollar (\$1.00). (1951, c. 1030, s. 7.)

§ 106-173.8. Revocation of grader's permit.—Any grader's permit shall be revoked or suspended when it shall appear to the Commissioner that the holder of such permit has violated any rule, regulation or standard of the Department of Agriculture or any law of North Carolina relating to the handling of meat, but no permit shall be revoked without proper notice to the holder thereof and an opportunity for him to be heard. (1951, c. 1030, s. 8.)

§ 106-173.9. Supervision of program.—The Department of Agriculture, upon receiving a request from a plant holding a plant permit, shall inaugurate and supervise a grading program for said plant. (1951, c. 1030, s. 9.)

§ 106-173.10. Grades.—Each plant or distributor holding a plant or distributor's permit and participating in a meat grading program authorized by this article shall cause all graded meat handled by it to be classified in the following grades: "prime", "choice", "good", "commercial", "cutter", "utility" and "canner". These designations may be made only by a person holding a grader's permit and the standards of quality which are required to make up these grades shall be the same as those used by the federal meat grading agency to classify meats in these same grades. (1951, c. 1030, s. 10.)

§ 106-173.11. All meat to be stamped.—Each plant or distributor holding a plant or distributor's permit shall, after a grader has determined the grade of any piece of meat handled by said plant or distributor, cause to be stamped on that piece of meat the grade name, the letters "N. C. D. A." and a letter, number or symbol to be assigned by the Department of Agriculture in order to identify the plant or distributor handling that piece of meat. (1951, c. 1030, s. 11.)

§ 106-173.12. Roller stamps to be rented.—Each plant or distributor holding a plant or distributor's permit shall obtain from the North Carolina Department of Agriculture one or more sets of roller stamps and shall pay a rental fee not in excess of the amount required to procure and supply these stamps. These roller stamps shall remain the property of the Department of Agriculture and shall be returned to the Department of Agriculture upon the suspension or revocation of the plant or distributor's permit or upon the request of the Commissioner. (1951, c. 1030, s. 12.)

§ 106-173.13. Roller stamps, contents of.—These roller stamps shall contain the letters "N. C. D. A." and a number, letter or other symbol to identify the plant or distributor using said stamp. The stamps shall also contain the words "prime", "choice", "good", "commercial", "utility", "cutter" and "canner" respectively. (1951, c. 1030, s. 13.)

§ 106-173.14. Reports by plants or distributors.—Plants or distributors holding meat grading permits shall make reports regarding the number of animals slaughtered, number of animals graded, the grades within which these animals were classified and the origin of these animals, and such other information

as the Commissioner may deem proper. These reports shall be filed when requested by the Commissioner and on the forms to be supplied by him. (1951, c. 1030, s. 14.)

§ 106-173.15. **Fees.**—The Commissioner is authorized to establish a uniform system of fees to be charged by the Department of Agriculture and these fees shall be charged for services performed in the administration of this article. (1951, c. 1030, s. 15.)

§ 106-173.16. **Rules and regulations; violation of article or regulations a misdemeanor.**—The Board of Agriculture is authorized, after public hearing following due public notice, to promulgate such rules, regulations, definitions and standards as may be necessary to carry out the provisions of this article. The violation of any of the provisions of this article, or any of the rules and regulations promulgated hereunder, shall constitute a misdemeanor and shall be punished in the discretion of the court. (1951, c. 1030, s. 16.)

ARTICLE 16.

Bottling Plants for Soft Drinks.

§ 106-174. **Specifications of places of manufacture and sale.**—Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be properly lighted and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling of soft drinks shall be conducted with due regard for the purity and wholesomeness of the product therein produced. (1935, c. 372, s. 1.)

§ 106-175. **Soft drink defined.**—The term “soft drink” as used herein shall include all soda waters, orangeade, root beers, and similar beverages, carbonated or otherwise, or ingredients used in the preparation of same. (1935, c. 372, s. 2.)

§ 106-176. **Establishment and equipment kept clean; containers sterilized.**—The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily, all bottles and other containers used must be sterilized in caustic soda or alkali solution in not less than three per cent alkali or other solution of the equivalent sterilizing effect as prescribed by the rules and regulations adopted by the Board of Agriculture. (1935, c. 372, s. 3; 1937, c. 232.)

Editor's Note.—The 1937 amendment inserted the words “or other solution of the equivalent sterilizing effect.”

§ 106-177. **Protection from contamination.**—Soft drinks in the process of manufacture, preparation, bottling, storing, or distribution must be protected from flies, other insects and filthy products, and, as far as may be necessary, from all other foreign or injurious contamination. (1935, c. 372, s. 4.)

§ 106-178. **Refuse removed daily.**—All refuse and other waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily. (1935, c. 372, s. 5.)

§ 106-179. **Syrup room screened.**—The doors, windows and other openings of the syrup room used for the preparation of soft drinks by bottling establishments shall be fitted with wire screens of not coarser than fourteen-mesh wire

gauze and the door or doors shall be fitted with self-closing screens. (1935, c. 372, s. 6.)

§ 106-180. **Washroom and toilet.**—Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks. (1935, c. 372, s. 7.)

§ 106-181. **Use of deleterious substances prohibited.**—The use of soap bark or any other substance deleterious to health in soft drinks is prohibited, and the container must bear the name of the material and the name and address of the manufacturer or jobber. (1935, c. 372, s. 8.)

§ 106-182. **Enforcement by Commissioner of Agriculture; inspectors; obstruction a misdemeanor.**—It shall be the duty of the Commissioner of Agriculture to enforce the provisions of this article. The food inspectors or experts of the Department of Agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector or expert of the Department in the performance of his duty in connection with this article shall be guilty of a violation thereof. (1935, c. 372, s. 9.)

§ 106-183. **Violation of article a misdemeanor.**—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1935, c. 372, s. 10.)

§ 106-184. **Bottler's inspection fee.**—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this State shall pay to the Commissioner of Agriculture an inspection fee of ten dollars during the month of June of each year or before any such bottling plant shall be operated thereafter. (1935, c. 372, s. 11.)

ARTICLE 17.

Marketing and Branding Farm Products.

§ 106-185. **Establishment of standard packages, etc., authorized.**—The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and State brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this article shall be construed to mean any or all of the crops or products named above in this section. (1919, c. 325, s. 1; C. S., s. 4781; 1921, c. 140.)

§ 106-186. **Power to employ agents and assistants.**—The Board of Agriculture is charged with the execution of the provisions of this article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C. S., s. 4782.)

§ 106-187. **Board of Agriculture to investigate marketing of farm products.**—It shall be the duty of the Board of Agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and

economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (1919, c. 325, s. 3; C. S., s. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc.—After investigation, and from time to time as may be practical and advisable, the Board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this State: Provided, that no standard established or requirement for marking prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated. (1919, c. 325, s. 4; C. S., s. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as “Not graded.” The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue “stop sale” orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five per cent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five per cent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, “Not standard size,” in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is appli-

cable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S., s. 4785; 1943, c. 483.)

Editor's Note.—The 1943 amendment graph. For comment on the amendment, added the last sentence of the first para- see 21 N. C. Law Rev. 329.

§ 160-190. Inspectors or graders authorized; revocation of license.—The Board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this article, or has violated any provision of this article, or of the rules and regulations made hereunder, the Board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C. S., s. 4786.)

§ 106-191. Appeal from classification.—The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C. S., s. 4787.)

§ 106-192. Certificate of grade prima facie evidence.—A certificate of the grade or other classification of any farm product issued under this article shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C. S., s. 4788.)

§ 106-193. Unwholesome products not classified; health officer notified.—Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the State or of any county or municipality thereof. (1919, c. 325, s. 9; C. S., s. 4789.)

§ 106-194. Inspection and sampling of farm products authorized.—Agents and employees are authorized from time to time to ascertain the amount of any farm products in this State, to inspect the same in the possession of any person engaged in the business of marketing them in this State, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (1919, c. 325, ss. 10, 11; C. S., s. 4790.)

§ 106-195. Rules and regulations; how prescribed.—The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States, prescribed under any act of Congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C. S., s. 4791.)

§ 106-196. Violation of article or regulations a misdemeanor.—Any person who violates any provision of this article, or of the rules and regulations

made under the article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both in the discretion of the court. (1919, c. 325, ss. 13, 14; C. S., s. 4792.)

ARTICLE 18.

Shipper's Name on Receptacles.

§ 106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor.—Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C. S., s. 5087.)

ARTICLE 19.

Trademark for Standardized Farm Products.

§ 106-198. Adoption, design and copyright of trademark, etc.—The Board of Agriculture shall adopt an official trademark, brand, or label, the design of which shall incorporate the words "Tar Heel" superimposed on an outline map of North Carolina, to identify North Carolina farm products of grade and quality in keeping with standards to be set up by the Board governing its use. The Board of Agriculture shall cause this trademark to be copyrighted to prevent imitation and infringement. (1941, c. 155, s. 1.)

§ 106-199. Regulation of use of trademark.—The trademark may be used only in the manner prescribed by the Board of Agriculture and under the rules and regulations to be laid down by the Board for its protection and use, and only on products meeting the quality, condition, pack and grade standards prescribed by the Board consistent with §§ 106-185 to 106-196. No person, firm or corporation shall use this trademark on any product until the official inspection service of the Department of Agriculture certifies that the product meets the requirements of quality, condition, pack and grade standard set up by the Board for the product. (1941, c. 155, s. 2.)

§ 106-200. License for use of trademark.—Growers, handlers, shippers or processors may procure a license to use the trademark on standardized products by applying to the Commissioner of Agriculture. The Commissioner may investigate the integrity and business methods of each applicant and may refuse licenses to applicants whose use might endanger the reputation of the trademark. The Commissioner may suspend, revoke or cancel the license of any user who violates the terms of his license or of any rule or regulation of the Board concerning its use. The Board of Agriculture may charge reasonable and uniform fees for the issuance of these licenses and for the use of the trademark by these licensees, and shall use these revenues to apply on the cost of administering this article and to

carry out a program of merchandising and advertising for standardized identified North Carolina farm products. (1941, c. 155, s. 3.)

§ 106-201. Licensing of providers of approved designs; furnishing list of growers, etc.—To facilitate the procurement of tags, labels, packages, bags or containers properly designed and constructed to display the official North Carolina State trademark, the following regulations shall be established:

(a) Manufacturers or distributors of tags, labels, packages, bags or containers shall apply to the Commissioner of Agriculture for a provider's license, and shall submit samples or designs of such tags, labels, packages, bags or containers for the Commissioner's approval as to their construction, adaptability and practicability for the use planned. The Commissioner shall license manufacturers or distributors of approved designs as approved providers of such articles, subject to rules, regulations and a reasonable license fee to be prescribed by the Board of Agriculture.

(b) No such license shall be issued until the provider agrees to furnish such trademarked supplies only to persons, partnerships or corporations within the State licensed to use the trademark. The approved provider shall immediately report to the Commissioner of Agriculture, on blanks provided for that purpose, each sale and shipment of such authorized supplies, the name of the purchaser, the quantity and type of supplies sold, and the point to which it was shipped or delivered. The Commissioner shall furnish approved providers with current lists of growers, shippers, handlers or processors licensed to use the North Carolina trademark.

(c) The Commissioner of Agriculture may suspend, revoke or cancel licenses of approved providers for violation of any of the terms of this license, in which case equitable arrangements will be made for disposal of manufactured goods in stock. (1941, c. 155, s. 4.)

§ 106-202. Violation made misdemeanor.—Any person, firm or corporation who knowingly violates any of the provisions of this article or any of the rules and regulations promulgated under it by the Board of Agriculture, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than one year, or both, for each offense. (1941, c. 155, s. 5.)

ARTICLE 20.

Standard Weight of Flour and Meal.

§§ 106-203 to 106-209: Repealed by Session Laws 1945, c. 280, s. 2.

Cross Reference.—As to act establishing uniform weights and measures generally, see §§ 81-1 to 81-22.

ARTICLE 21.

Artificially Bleached Flour.

§ 106-210. Collection and analysis of samples; publication of results.—For the purpose of regulating the labeling and sale of artificially bleached flour, the Board of Agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the State obtained, and shall cause same to be analyzed or examined by the State food chemist or other experts of the Department of Agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this article. The Board of Agriculture is hereby authorized to make such publication of the results of the examination, analysis, and so forth as they may deem proper. (1917, c. 249, s. 1; C. S., s. 4801.)

§ 106-211. **Entry to secure samples.**—The food inspectors of the Department of Agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same. (1915, c. 278, s. 2; C. S., s. 4802.)

§ 106-212. **Commissioner to notify solicitor of violations and certify facts.**—If it shall appear from such inspection or examination or both that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1915, c. 278, s. 3; C. S., s. 4803.)

§ 106-213. **Label for artificially bleached flour.**—Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths of an inch in size, the legend: "Artificially Bleached." (1915, c. 278, s. 4; C. S., s. 4804.)

§ 106-214. **Statement required to be filed before sale.**—Before any artificially bleached flour shall be offered for sale in this State the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such. (1915, c. 278, s. 5; C. S., s. 4805.)

§ 106-215. **Inspection fee for registering brands.**—For the purpose of defraying expenses incurred in the enforcing of the provisions of this article, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the State, the manufacturer, dealer, or agent registering same shall pay to the Commissioner of Agriculture an inspection fee of fifteen dollars, and during the month of January in each year, or before such flour is offered for sale in the State, said fees to be used by the Board and Commissioner of Agriculture for executing the provisions of this article. (1917, c. 249, s. 2; C. S., s. 4806.)

§ 106-216. **Violation of article a misdemeanor.**—Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in § 106-213, or who shall violate any of the provisions of the article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundred dollars, or be imprisoned not to exceed six months, or both, in the discretion of the court. (1915, c. 278, s. 7; C. S., s. 4807.)

§ 106-217. **Forfeiture for unauthorized sale; release from forfeiture.**—The flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for use in executing the provisions of this article: Provided, that the Commissioner of Agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the Department in the seizure of the same, and upon compliance with the re-

quirements of this article, when it shall appear to the Commissioner that said owner did not intend to violate the law. (1915, c. 278, s. 7; C. S., s. 4808.)

§ 106-218. Seller to furnish samples on payment.—Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the Board of Agriculture to secure same, and who shall apply for such sample. (1915, c. 278, s. 8; C. S., s. 4809.)

§ 106-219. Refusing samples or obstructing article a misdemeanor.—Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of § 106-218, or any person who shall willfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or imprisoned, in the discretion of the court. (1915, c. 278, s. 8; C. S., s. 4810.)

ARTICLE 21A.

Enrichment of Flour, Bread and Corn Meal.

§ 106-219.1. Title of article.—This article may be cited as “The North Carolina Flour, Bread, and Corn Meal Enrichment Act.” (1945, c. 641, s. 1.)

Editor's Note. — For comment on act from which this article was codified, see 23 N. C. Law Rev. 344.

§ 106-219.2. Definitions.—For the purpose of this article:

(1) “Commissioner” means the Commissioner of Agriculture; “Board” means the Board of Agriculture.

(2) “Person” includes individual, partnership, corporation, and association.

(3) “Flour” (white flour) means the fine-grained product obtained from the milling of wheat, with or without leavening, bleaching, or other agents for similar purposes. The adjectives “whole wheat” means the variety with no part of the wheat berry removed; “white” means the bolted or refined type with parts of the wheat berry removed; but the term “flour” shall not include flours such as specialty cake, pancake and pastry flours which are not used for bread, roll, bun or biscuit making.

(4) “White bread” means bread made of “white flour,” also rolls and biscuits of the bread-dough type; but shall not include the extensively sweetened, iced or cake type of product.

(5) “Degerminated” applied to corn meal or grits means said products with more than ten per cent (10%) of the germ removed.

(6) “Enriched” means restored or brought up to content of vitamins and minerals as prescribed in this article.

(7) “North Carolina Food, Drug and Cosmetic Act” refers to article twelve of this chapter. (1945, c. 641, s. 2.)

§ 106-219.3. Required vitamins and minerals. — On and after the effective date of this article, it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale in this State any products covered herein which do not contain the vitamins and minerals as prescribed in the following formulae:

(a) White flour, degerminated corn meal, and degerminated hominy grits shall contain in each pound not less than two (2.0) and not more than two and five tenths (2.5) milligrams of vitamin B (thiamin); not less than one and two tenths (1.2) and not more than one and five tenths (1.5) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty (20.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than sixteen and

five tenths (16.5) milligrams of iron; except that self-rising flour shall contain, in addition to the above ingredients, not less than five hundred (500) and not more than one thousand five hundred (1500) milligrams of calcium.

(b) White bread shall contain in each pound not less than one and one tenth (1.1) and not more than one and eight tenths (1.8) milligrams of vitamin B (thiamin); not less than seven tenths (0.7) and not more than one and six tenths (1.6) milligrams of riboflavin; not less than ten (10.0) and not more than fifteen (15.0) milligrams of niacin (nicotinic acid); not less than eight (8.0) and not more than twelve and five tenths (12.5) milligrams of iron.

(c) Enrichment may be accomplished by the addition of vitamins from a natural or synthetic source, or other harmless and assimilable enriching ingredients which will accomplish the purpose of this article and will be acceptable under the North Carolina Food, Drug and Cosmetic Act.

(d) The enriching ingredients required under subsections (a) and (b) of this section may be added in a harmless carrier which does not impair the enriched products; provided, (1) that such carrier is used only in quantity necessary to effect uniform mixture in the finished products; (2) that the concentration of enriching ingredients does not differ more than fifteen per cent (15%) between top and bottom of containers following subjection to normal handling and transportation; and (3) that enriched grits be so stabilized that loss of vitamins and minerals from customary rinsing before cooking shall not exceed ten per cent (10%). (1945, c. 641, s. 3.)

§ 106-219.4. Products exempted. — The terms of this article shall not apply:

(a) To white flour, degerminated grits or degerminated corn meal sold to bakers or other commercial secondary processors; provided, the purchaser furnishes to the seller an approved certificate of intent to use said flour, grits or corn meal solely in the production of the products covered in this article; or in the manufacture of legitimate products not covered by the provisions of this article.

(b) To whole wheat flour or bread made from the entire wheat berry, or meal or grits made from the entire corn grain; provided, that (1) flour or bread made from the whole wheat berry, or various portions thereof, mixed with white flour shall contain vitamins and minerals equal to that required for the respective enriched products as defined in § 106-219.3 (a) and (b); (2) that this subsection shall not be construed to prohibit the further enrichment of whole grain products when done so as to comply with standards and labeling requirements under the North Carolina Food, Drug and Cosmetic Act.

(c) To products ground for the producer's use from the producer's grain; provided, that such products shall become subject to this article when offered for sale. (1945, c. 641, s. 4.)

§ 106-219.5. Enforcement by Commissioner. — (a) The provisions of this article shall be enforced by the Commissioner of Agriculture, who is hereby directed, and he or his duly authorized agents shall have the authority to conduct examinations and investigations and, for the purpose of inspection and collection of samples for analysis, to enter, during business hours, all mills, storages, or other establishments or vehicles where products covered in this article are, or upon reasonable grounds are believed to be processed, contained, transported or sold.

(b) In the event that there be shortage or imminence of shortage of enriching ingredients required under § 106-219.3 (a) and (b), the Commissioner shall obtain the facts from all proper and authorized sources or from testimony produced at public hearing and if findings show that the distribution of a food may be substantially impeded by enforcement, he shall immediately order suspension of such requirements as threaten distribution; provided, such suspension shall be revoked as soon as supplies of enriching ingredients are again available. (1945, c. 641, s. 5.)

§ 106-219.6. **Board authorized to make regulations; hearings.**—The authority for promulgating regulations for the efficient enforcement of this article, and for bringing into force the provisions under § 106-219.3 (c) is hereby vested in the Board of Agriculture, and the Board is hereby authorized to make standards hereunder conform insofar as practicable, with interstate standards. Actions under this section shall follow proper public notice and hearing. (1945, c. 641, s. 6.)

§ 106-219.7. **Violation a misdemeanor.**—Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine for each offense of not more than one hundred dollars (\$100.00) or to imprisonment of not more than thirty days, or to both such fine and imprisonment. (1945, c. 641, s. 7.)

§ 106-219.8. **Application of article 12.**—All of the provisions of article twelve of this chapter, said article being entitled "Food, Drugs and Cosmetics," as far as the same are pertinent shall be applicable to the foods, ingredients and substances defined in this article, and all of the remedies contained in said article twelve are hereby made available to the Commissioner, and to the Commissioner and the Board, for the enforcement of this article. (1945, c. 641, s. 8.)

§ 106-219.9. **Mills grinding whole grain exempted.**—Nothing in this article shall apply to mills operated by water or other power grinding whole grain of corn or whole wheat flour. (1945, c. 641, s. 9½.)

ARTICLE 22.

Inspection of Bakeries.

§ 106-220. **Sanitary condition of rooms; drainage; toilets.**—Every room or other place occupied or used as a bakery for the preparation, production, storage, or display of bread, cakes, or other bakery products intended for sale for human consumption, shall be clean, properly lighted, and ventilated. The floors, walls, and ceilings of the rooms in which the dough or pastry is mixed, handled, or prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled, stored, or displayed, shall be kept and maintained in a clean and sanitary condition. All openings into such rooms, including windows and doors, shall be properly screened to exclude flies. Every such bakery shall be provided with adequate drainage and suitable wash sinks. If a toilet or water closet is maintained in connection with such bakery, it must be of sanitary construction, and such toilet or water closet shall be well ventilated and kept in a sanitary condition. (1921, c. 173, s. 1; C. S., s. 7251(k).)

§ 106-221. **Tables, shelves and implements; refuse; sleeping rooms.**—All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing or handling bakery products or the ingredients of same, must be thoroughly cleaned daily when in use, and kept in a clean, sanitary condition. All refuse, dirt, and waste matter subject to decomposition and decay incident to the production of bakery products must be removed from the bakery daily. The work rooms of bakeries, where bakery products are made, stored or displayed, shall not be used as sleeping or living rooms, and shall at all times be separate and closed from any such room. (1921, c. 173, s. 2; C. S., s. 7251(1).)

§ 106-222. **Employees; sitting or lying on tables; cleanliness.**—No employee or other person shall sit or lie upon any of the tables, troughs, shelves, etc., which are used for the dough or other bakery products. Before beginning the work of preparing or mixing the ingredients, or after using toilet or water closet, every person engaged in the preparation or handling of bakery products

shall wash the hands and arms thoroughly, and for this purpose sufficient wash basins or sinks, together with soap and clean towels, shall be provided by the bakery. (1921, c. 173, s. 3; C. S., s. 7251(m).)

§ 106-223. **Use of tobacco.**—No person shall use tobacco in any form in any bakery or bread manufacturing plant where bread or other bakery products are manufactured or stored. (1921, c. 173, s. 3a; C. S., s. 7251(n).)

§ 106-224. **Ingredients and materials.**—All ingredients used in the manufacture or making of bread or any other bakery products shall be pure and wholesome, and shall contain no substance that is poisonous or deleterious to health. All materials and ingredients used in bakery products shall be stored, handled, and kept in a way to protect them from spoilage and contamination, and no material shall be used which is spoiled or contaminated, or which may render the product unwholesome or unfit for food. (1921, c. 173, s. 4; C. S., s. 7251(o).)

§ 106-225. **Adulterants; stale products; infections.**—No material or ingredient may be used which may deceive the purchaser, or which lowers or lessens the nutritive value of the product. No bread or other bakery products shall be sold or offered for sale for human food that has by age or otherwise become stale. All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted so as to prevent the distribution of contamination or diseases and so as to prevent the distribution of the bakery infection in bread commonly known as “rope” or other bakery infections. No bread or other bakery products shall be returned by any dealer, restaurant, cafe or hotel keeper to bakery or distributor after same has been in stock where it may have been subject to contamination, and no bakery or distributor shall directly or indirectly accept any such bread or other bakery products or make any allowance for such products. (1921, c. 173, s. 5; C. S., s. 7251(p); 1925, c. 286.)

Editor's Note.—The last two sentences were added by the 1925 amendment.

§ 106-225.1. **Bakery products containing souvenirs, trinkets, etc., which may endanger consumers.**—No bread or other bakery product shall contain or have in direct contact with it trinkets, metal objects, money, pictures, cardboard cutouts, balloons or other objects or materials, by way of souvenirs, premiums or otherwise, which may endanger consumers by contamination arising from insanitation, from contact with printing inks, paints or other coatings, materials or substances which are not suitable for contact with food or which may in any way expose consumers to danger of injury because of biting into or swallowing such materials or objects: Except, that these provisions shall not be interpreted to prohibit the safe and proper use of such items as cake supports, decorations and trimmings or the placing of such objects as dishes and spoons in unfinished foods when this is done in a manner which in no way endangers consumers. (1949, c. 985.)

§ 106-225.2. **New bags or other new containers required for grain cereal products.**—No person, firm, association, or corporation, and no flour, corn or other cereal mill, or the owner or operator of same, and no bakery or food processing establishment, or the owner or operator of same, shall do, or suffer or permit to be done, any of the following acts:

(a) Sell or offer for sale any flour, corn meal, or other grain cereal product for human consumption which has been packed in bags or containers that have been previously used for any purpose, or

(b) Use any except new bags or other new containers for the packing of flour, corn meal or other grain cereal products for human consumption, or

(c) Import, ship, or cause to be shipped into the State of North Carolina

any flour, corn meal or other grain cereal product for human consumption unless such products are packed in new bags or other new containers which have not been previously used, or

(d) Use in foods for human consumption any flour, corn meal or other grain cereal product which has been packed in used bags or in other containers which have been previously used. (1949, c. 985.)

§ 106-226. Department of Agriculture to enforce law; examination of plant and products.—It shall be the duty of the Department of Agriculture to enforce this article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure proper compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all bakeries or storage rooms where bakery products are made, stored, or kept, and any person who shall prevent or attempt to prevent any duly authorized expert in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1921, c. 173, s. 6; C. S., s. 7251(q).)

§ 106-227. Closing of plant; report of violation of article to solicitor.—If it shall appear from examination that any provision of this article has been violated, the Commissioner of Agriculture shall have authority to order the bakery or place closed until the law has been complied with. If the owner or operator of same refuses or fails to comply with the law, the Commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 173, s. 7; C. S., s. 7251(r).)

§ 106-228. Regulations; establishment; violation.—The Board of Agriculture is authorized to establish such regulations, not in conflict with this article, as may be necessary to make provisions of this article effective, and to insure the proper compliance of same, and a violation of the regulations shall be deemed to be a violation of this article. (1921, c. 173, s. 8; C. S., s. 7251(s).)

§ 106-229. Inspection fee.—For the purpose of defraying expenses incurred in the enforcement of this article the owner or operator of each public bakery or bakery furnishing bakery products to the public operated in this State shall pay to the Commissioner of Agriculture during the month of May of each year, an inspection fee of ten dollars: Provided, that no inspection fee shall be required of farm women in North Carolina who make cakes and breads and sell the same on the home demonstration curb markets. (1921, c. 173, s. 9; C. S., s. 7251(t); 1937, c. 281.)

Editor's Note. — The 1937 amendment added the proviso.

§ 106-230. Violation of article a misdemeanor.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 173, s. 10; C. S., s. 7251(u).)

§ 106-231. Inspectors.—The inspectors who shall carry out the provisions of this article shall be the same inspectors who shall be sent out by the Department of Agriculture to inspect bottling works and general food inspections. (1921, c. 173, s. 10a; C. S., s. 7251(v).)

§ 106-232. Article supplemental to municipal ordinances.—Nothing in this article shall have the effect of repealing or rendering void ordinances upon this subject now in force in any municipality in North Carolina, but this article shall be construed to be supplemental and in addition thereto. (1921, c. 173, s. 11; C. S., s. 7251(w).)

ARTICLE 23.

Oleomargarine.

§ 106-233. **Definitions.**—(a) The word “person” shall mean person, firm, or corporation, either principal or agent.

(b) Any word used shall indicate the singular or plural as the case demands.

(c) The word “oleomargarine” shall mean: All substance heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of tallow, beef extracts, suet, lard, lard oil, fish oil, or fish fat, vegetable oil, annato, and other coloring matter, intestinal fat and offal fat, if (first) made in imitation or semblance of butter, or (second) calculated or intended to be sold as butter or for butter, or (third) churned, emulsified, or mixed in cream, milk, water, or other liquid and containing moisture in excess of one per centum of common salt. This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor to any of the following containing condiments or spices: salad dressings, mayonnaise dressings, or mayonnaise products. As used in this article, the term “oleomargarine” shall be deemed applicable to the food product known as margarine and any requirement herein contained for labeling or display of the word “oleomargarine” shall be deemed sufficiently complied with by the use of the word “margarine.” (1931, c. 229, s. 1; 1949, c. 978, s. 1.)

Editor's Note. — The 1949 amendment added the last sentence of subsection (c).

§ 106-234: Repealed by Session Laws 1949, c. 978, s. 2.

§ 106-235. **License to sell oleomargarine.**— Every person desiring to manufacture, sell, or offer or expose for sale, or have in possession with intent to sell oleomargarine, shall make application for a license to do so in such form as prescribed by the State Commissioner of Agriculture, but this provision shall not apply to any person engaged in the retail sale of oleomargarine.

If the said application is satisfactory to the State Commissioner of Agriculture, there shall be issued to the applicant a license authorizing him to engage in the manufacture or sale of oleomargarine, for which said license the applicant shall pay: If a wholesaler or distributor, the sum of twenty-five dollars (\$25.00) annually for each separate plant or establishment operated or maintained in this State by such wholesaler or distributor. The said license fees shall be collected by the State Department of Agriculture, and covered into the State treasury as a part of the agricultural fund.

All licenses shall expire on the thirty-first day of December of each year. (1931, c. 229, s. 3; 1939, c. 282, ss. 1, 2; 1945, c. 523, s. 2; 1949, c. 978, s. 3.)

Editor's Note. — The 1939 amendment added the exception to the first paragraph. It also made changes in the second paragraph. The 1945 amendment struck out the words which had restricted this section to uncolored oleomargarine. The 1949 amendment substituted “twenty-five dollars” for “seventy-five dollars” in the second paragraph.

§ 106-236. **Display of signs.**—(a) **Marking Containers.**—It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished by the word “oleomargarine” on the outside of each tub, package, or parcel.

(b) **Notice in Public Eating Places.**—No person shall possess in a form ready for serving yellow oleomargarine at a public eating place unless a notice that oleomargarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the or-

dinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than normally used to designate the serving of other food items; and no person shall serve yellow oleomargarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleomargarine. (1931, c. 229, s. 4; 1939, c. 282, s. 3; 1945, c. 523, s. 3; 1949, c. 978, s. 4.)

Editor's Note.—The 1949 amendment rewrote this section as changed by the 1939 and 1945 amendments.

§ 106-237. **Enforcement of article; revocation of license.**—This article shall be administered and enforced by the State Department of Agriculture, which shall prescribe necessary rules and regulations therefor. Any license which is issued under the terms and conditions prescribed in § 106-235 can be revoked by the State Commissioner of Agriculture upon the submission to him of evidence that this article has been violated by the holder of such license. (1931, c. 229, s. 5.)

§ 106-238. **Penalties.**—Every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court. (1931, c. 229, s. 6.)

ARTICLE 24.

Excise Tax on Certain Oleomargarines.

§ 106-239. **Tax imposed; rules and regulations; penalties; dispositions of proceeds.**—There is hereby imposed an excise tax of ten cents per pound on all oleomargarine sold, offered or exposed for sale, or exchanged in the State of North Carolina, containing any fat and/or oil ingredient other than any of the following fats and/or oils: Cottonseed oil, peanut oil, corn oil, soya bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat. Such excise tax shall be in the form of a revenue stamp in such denominations as will best carry out the provisions of the law. Said stamps shall be properly safeguarded as to their manufacture, preservation and distribution and shall be in the charge of the State Department of Agriculture.

The State Department of Agriculture is hereby empowered to promulgate such rules and regulations as are consistent with the provisions of this section.

Any person violating any of the provisions of this section, or any of the rules or regulations promulgated by the State Department of Agriculture for the purpose of carrying out its provisions, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), or imprisoned in the county jail not to exceed two months, or both fined and imprisoned.

All moneys derived from the sale of revenue stamps hereunder shall be paid into the State Department of Agriculture for the enforcement of this section. (1935, c. 328.)

ARTICLE 25.

Sale of Eggs.

§ 106-240. **Regulation of marketing and branding of eggs.**—The regulation of marketing and branding eggs shall be only as authorized under the provisions of this article and of §§ 106-185 to 106-196. (1939, c. 193.)

§ 106-241. Containers of cold storage eggs required to be labeled as such.—Any person, firm or corporation offering for sale cold storage eggs either wholesale or retail, shall cause crates containing the eggs or any other type of container to be stamped or printed with the words "Cold Storage Eggs." (1939, c. 291, s. 1.)

§ 106-242. Restaurant, etc., menu or card required to show cold storage eggs.—Any hotel, restaurant, inn, or any other establishment serving cold storage eggs to the public shall cause to be written on their menu, or printed on a card, "Cold Storage Eggs." (1939, c. 291, s. 2.)

§ 106-243. Labelling of invoices.—Every person selling eggs which have been in storage thirty days or more, either within or without the State, to a retail store, hotel, restaurant, inn, or any other establishment, shall furnish an invoice with the wording "Cold Storage Eggs." A copy of such invoice shall be kept on file by the person selling and the one buying at their respective places of business for a period of sixty days and shall be available and open for inspection at all reasonable times by the Department of Agriculture. (1939, c. 291, s. 3.)

§ 106-244. Examination of eggs by Commissioner of Agriculture, etc., authorized.—In all cases the final determination as to the meeting of the above requirements shall be made by candling. In carrying out the provisions of this article, the Commissioner of Agriculture, his employees, or agents are authorized to enter on any business day, during the usual hours of business, any store, warehouse, market or place where eggs are sold or offered for sale and to make such examination as is necessary to determine the class of eggs sold or offered for sale. (1939, c. 291, s. 4.)

§ 106-245. Violations made misdemeanor.—Any person wilfully or intentionally violating the provisions of this article shall be guilty of a misdemeanor and shall be fined or imprisoned within the discretion of the court. (1939, c. 291, s. 5.)

ARTICLE 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-246. Cleanliness and sanitation required; wash rooms and toilets, living and sleeping rooms; animals.—For the protection of the health of the people of the State, all places where ice cream, frozen custard, milk sherbet, sherbet, water ices, and other similar frozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all work rooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable wash rooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows or other openings. (1921, c. 169, s. 1; C. S., s. 7251(a); 1933, c. 431, s. 1.)

Editor's Note. — The 1933 amendment made this section applicable to frozen custard, milk sherbet, etc.

§ 106-247. Cleaning and sterilization of vessels and utensils.—Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and imple-

ments used in making or handling cream, ice cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C. S., s. 7251(b).)

§ 106-248. Purity of products.—All cream, ice cream, butter, cheese, or other products produced in places named herein shall be pure, wholesome, and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the Board of Agriculture provided for in § 106-253, and whole milk, sweet cream, and ice-cream mix shipped into this State from other states shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing grade or standard of quality of product. (1921, c. 169, s. 3; C. S., s. 7251(c); 1933, c. 431, s. 2.)

Editor's Note. — The 1933 amendment added the last clause of the section relating to products shipped into the State.

§ 106-249. Receivers of products to clean utensils before return.—Every person, company, or corporation who shall receive milk, cream, or ice cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C. S., s. 7251(d).)

§ 106-250. Correct tests of butter fat; tests by Board of Agriculture.—Creameries and factories that purchase milk and cream from producers of same on a butterfat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this article. The Board of Agriculture, under regulations provided for in § 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C. S., s. 7251(e).)

§ 106-251. Department of Agriculture to enforce law; examinations.—It shall be the duty of the Department of Agriculture to enforce this article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this article shall be guilty of a violation of the article. (1921, c. 169, s. 6; C. S., s. 7251(f).)

§ 106-252. Closure of plants for violation of article; certificate to solicitor of district.—If it shall appear from the examinations that any provision of this article has been violated, the Commissioner of Agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of the place refuses or fails to comply with the order, law or regulations, the Commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 169, s. 7; C. S., s. 7251(g).)

§ 106-253. Standards of purity and sanitation; regulating trade or brand names of frozen desserts.—The Board of Agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this arti-

cle effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the Board of Agriculture. (1921, c. 169, s. 8; C. S., s. 7251(h); 1933, c. 431, s. 3; 1945, c. 846.)

Editor's Note. — The 1933 amendment added the clause "to make such definitions and" near the beginning of the section, and the 1945 amendment added the second sentence.

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories.—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor, or operator of each ice-cream factory where ice cream, frozen custard, milk sherbet, sherbet, water ices and/or other similar frozen food products are made or stored or cheese factory or creamery in this State that disposes of its product at wholesale to retail dealers, to be resold, shall pay to the Commissioner of Agriculture during the month of July of each year an inspection fee of twenty dollars (\$20.00), and each maker of ice cream, frozen custard, milk sherbet, sherbet, water ices, and/or other similar frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars (\$5.00) during the month of July of each year. (1921, c. 169, s. 9; C. S., s. 7251(i); 1933, c. 431, s. 4.)

Editor's Note. — The 1933 amendment made this section applicable to frozen custards, milk sherbets, etc.

§ 106-255. Violation of article a misdemeanor; punishment. — Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars (\$25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C. S., s. 7251(j).)

ARTICLE 27.

Records of Purchases of Milk Products.

§ 106-256. Annual reports to Dairy Division by creameries, milk distributing plants, etc.—Every person, firm or corporation owning or operating a milk processing plant, creamery, milk distributing or cream buying station in this State, where milk or cream is received, shall file on or before April first of each year, upon blanks furnished, a report to the Dairy Division of the State Department of Agriculture, showing the amount of milk and cream received by such plants or stations during the calendar year preceding. The said report shall show the amount of butter, cheese, ice cream or other dairy products manufactured. (1939, c. 327, s. 1.)

§ 106-257. Records of purchases of cream.—Records of the purchase of cream shall be kept at each plant or station for a period of six months from the date of purchase, and shall show the date of purchase, the net pounds of cream purchased, the butterfat tests, the price of butterfat, and the amount paid therefor, in such manner as may be required on the report blanks provided. When payment for cream is made in cash, receipts of such payments shall be kept with the records, otherwise canceled checks or facsimile impressions shall be kept as receipts with records. Such records shall be available for inspection by any authorized representative of the Commissioner of Agriculture. (1939, c. 327, s. 2.)

§ 106-258. **Individual plant records treated as confidential.**—Any individual plant records shall be treated as confidential by anyone handling them and such individual records shall not be published or made accessible to any unauthorized person or representative. (1939, c. 327, s. 3.)

§ 106-259. **Failure to comply with provisions of article made misdemeanor.**—Any person, firm or corporation owning or operating a creamery, cheese plant, condensed milk plant, ice-cream plant, milk depot, or milk distributing plant, or milk or cream buying station, failing to comply with the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1939, c. 327, s. 4.)

ARTICLE 28.

Records and Reports of Milk Distributors and Processors.

§ 106-260. **"Milk" defined.**—Wherever the word "milk" appears herein after in this article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk, including flavored drinks, skim condensed, whole condensed, dry milks and evaporated. (1941, c. 162, s. 1; 1951, c. 1133, s. 1.)

Editor's Note.—The 1951 amendment inserted the words "including flavored drinks, skim condensed, whole condensed, dry milks and evaporated" at the end of the section.

§ 106-261. **Reports to Commissioner of Agriculture as to milk purchased and sold.**—Every person, firm or corporation that purchases milk for processing or distribution or sale, or that purchases milk for processing and distribution and sale, in North Carolina shall, not later than the twentieth of each month following the month such business is carried on, furnish information to the Commissioner of Agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which milk was distributed or sold. Such report shall include all milk purchased from producers and other sources, imported, all milk sold to consumers, sold or transferred between plants, distributors, affiliates and subsidiaries, and all milk used in the manufacture of other dairy products; provided, however, that every person, firm or corporation engaged in purchasing milk and/or dairy products as defined in § 106-260, for processing and manufacturing purposes only and who is not engaged in distributing and/or selling milk or milk products in fluid form, shall be required to report only the receipts of such milk or milk products and the quantities of dairy products manufactured. Provided, further, that the provisions of this section shall not apply to retail stores unless the same are owned, controlled or operated by milk processors and/or distributors. (1947, c. 162, s. 2; 1951, c. 1133, s. 2.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 106-262. **Powers of Commissioner of Agriculture.**—The Commissioner of Agriculture is hereby authorized and empowered:

(a) To require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was used or disposed;

(b) To designate any area of the State as a natural marketing area for the sale or use of milk or milk products;

(c) To set up classifications for the sale or use of milk or milk products for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given.

(d) To make rules and regulations and issue orders necessary to carry out and enforce the provisions of this article, including the supervision of producer bases

and other production incentive plans; methods of uniform and equitable payments to all producers selling milk to the same firm, person or corporation; uniform methods of computing weights of milk and/or milk products; and maximum handling and transportation charges for milk sold and/or transferred between plants. (1941, c. 162, s. 3; 1951, c. 1133, s. 3.)

Editor's Note.—The 1951 amendment re-wrote this section.

§ 106-263. Distribution of milk in classification higher than that in which purchased.—It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks' period. (1941, c. 162, s. 4.)

§ 106-264. Inspections and investigations by Commissioner.—For the purpose of administering this article the Commissioner of Agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the State, and may take testimony for the purpose of ascertaining facts which in the judgment of the Commissioner are necessary to administer this article. The Commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful.—It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor.—Any person, firm, or corporation violating any of the provisions of this article and/or any rule, regulation or order promulgated in accordance with the provisions of this article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000.00), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7; 1951, c. 1133, s. 4.)

Editor's Note.—The 1951 amendment inserted the words "and/or any rule, regulation or order promulgated in accordance with provisions of this article."

ARTICLE 28A.

Regulation of Milk Brought into North Carolina from Other States.

§ 106-266.1. Requirements to be complied with by out-of-state shippers of milk or cream.—No person, firm, association or corporation shall ship, transport, carry, send or bring into this State any milk or cream for fluid distribution without first having applied for and obtained from the Commissioner of Agriculture of this State a permit authorizing such transaction, shipment or transportation. In order to defray the expenses of the enforcement of this article, the Commissioner of Agriculture shall collect a fee of twenty-five dollars (\$25.00)

for the issuance of such permit. The Board of Agriculture is authorized and empowered to establish, determine, fix and promulgate rules and regulations containing all necessary definitions, conditions, standards and classifications of the type, kind, quality, conditions of production, sanitary conditions and other reasonable requirements that must be complied with before milk or cream is shipped, transported, carried or brought into this State, including compliance with the Milk Audit Law of this State. Before any person, firm, association or corporation ships, transports, brings, sends or carries any milk or cream into this State, advance notice of such shipment or transportation shall be given to the Commissioner of Agriculture of this State and contain such information as the Board of Agriculture shall prescribe by rules and regulations. The Commissioner of Agriculture is authorized to suspend, immediately upon notice to a permit holder, any permit issued under authority of this section if it is found by him that any of the conditions of the permit or any of the rules, regulations and laws have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing and such other examinations or inspections as he deems proper, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. Any permit issued by the Commissioner of Agriculture under the authority of this section may be revoked after an opportunity for a hearing by the Commissioner of Agriculture, upon the violation by the holder of the permit of any of the terms, conditions, rules and regulations issued and promulgated by authority of this section. All milk or cream shipped, transported, carried, sent or brought into this State shall be sold to, consigned to, delivered to, be transported, sent or carried only to a person, firm, association or corporation or to a milk distributor in this State holding or possessing an unrevoked permit from the Commissioner of Agriculture authorizing the receiving or importation of such milk or cream. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31st of each year.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to approved permit holders, or to non-permit holders, temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.2. Requirements and standards for distributors in this State distributing imported milk or cream. — No person, firm, association or corporation shall import, transport into, receive, bring into or cause to be imported or to be sent into this State from another state for the purpose of sale, for the purpose of offering for sale, for the purpose of distribution any milk or cream unless such person, firm, association or corporation has obtained a permit from the Commissioner of Agriculture for such purpose. All permits issued under the authority of this section shall be issued after the payment of a fee of twenty-five dollars (\$25.00) to the Commissioner of Agriculture. The permits issued hereunder shall be conditioned upon compliance by the applicant or holder with the rules and regulations and laws of North Carolina governing milk or cream and such other definitions and standards as may be established and promulgated by the Board of Agriculture. The Commissioner of Agriculture is authorized to suspend, immediately upon due notice, any permit issued under authority of this section if it is found by the Commissioner that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued, or as amended. The permits issued

hereunder may be revoked after due notice and an opportunity for hearing by the Commissioner of Agriculture upon a finding at such hearing of any violation of any of the conditions, terms or requirements established and promulgated by the Board of Agriculture or of any of the laws of the State governing milk or cream, including but not by way of limitation, the Milk Audit Law and other dairy laws of the State. It shall be the duty of the Commissioner of Agriculture to issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any quantity of milk or cream imported, transported, or brought into this State and to hold the same at a designated place when the Commissioner of Agriculture finds that said milk or cream does not meet the requirements of the provisions of this article or the rules and regulations promulgated thereunder, until the law has been complied with and said milk or cream is released in writing by the Commissioner of Agriculture or said violation has been otherwise legally disposed of by written authority or by written order by the Commissioner of Agriculture directing the owner or custodian to remove the milk or cream from the State. The Commissioner of Agriculture shall release the milk or cream so withdrawn from sale when the requirements of the provisions of this article and the rules and regulations promulgated thereunder have been complied with and upon payment by the out-of-state shipper of all costs and expenses incurred in connection with the withdrawal. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31st of each year. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this article may, with like force and effect, be executed by such employees and agents of the Commissioner of Agriculture as may, from time to time, be designated by him for such purpose. The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any dairy, milk processing plant, distributing plant or any establishment, depot, tank, truck or vehicle which contains milk for the purpose of inspecting any milk or cream, containers, or any other establishment or device pertaining to the transportation, the distribution, bottling or storage of milk or cream for the purpose of determining whether any of the provisions of this article or of the rules and regulations promulgated thereunder have been violated, and the Commissioner of Agriculture may secure samples of specimens of any such milk or cream after paying or offering to pay for such sample.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to permit holders, or non-permit holders upon payment of a permit fee of twenty-five dollars (\$25.00), temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area or to a particular city or to a particular market or markets in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

Editor's Note.—It would seem that the end of the first paragraph should read words "samples of specimens" near the "samples or specimens."

§ 106-266.3. Power to make rules and regulations.—The Board of Agriculture is authorized to make such regulations not in conflict with this article as shall be necessary to make the provisions of this article effective and insure the proper enforcement of same, and a violation of such regulations shall be deemed a violation of this article. (1949, c. 822.)

§ 106-266.4. Penalty for violation.—Any person, firm, association or corporation found guilty by a competent court of violating any of the provisions of this article shall be guilty of a misdemeanor and upon plea of guilty or conviction shall be fined not to exceed fifty dollars (\$50.00) for the first offense and for each subsequent offense shall be fined or imprisoned in the discretion of the court. (1949, c. 822.)

§ 106-266.5. **Exemption clause.**—The provisions of this article shall not be construed as extending to or applying to evaporated milk, powdered whole milk, powdered skimmed milk, or cream used for manufacturing purposes. Out-of-state dairy farms producing milk for North Carolina plants under a permit from, and in accordance with the local health regulations of the county or city to which milk is being delivered, may be exempted from the provisions of this article at the discretion of the Commissioner of Agriculture. (1949, c. 822.)

ARTICLE 29.

Inspection, Grading and Testing Milk and Dairy Products.

§ 106-267. **Inspection, grading and testing dairy products.**—The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1.)

Editor's Note.—The 1951 amendment rewrote this article.

§ 106-267.1. **License required; fee; term of license; examination required.**—Every person who shall test milk or cream in this State by the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture for a license to test milk or cream where such milk or cream is bought and paid for on the basis of the amount of percentage of butterfat or milk fat contained therein. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall run for a period of one year from the date of issue unless sooner revoked, as provided in § 106-267.3. A license fee of two dollars (\$2.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1.)

Editor's Note. — It would seem that the word "of" at the beginning of line nine should read "or."

§ 106-267.2. **Rules and regulations.**—The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this article that shall govern the granting of licenses under this article and shall establish and promulgate rules and regulations not inconsistent with this article that shall govern the manner of testing, including, but not in limitation thereof, the taking of samples, location where the testing of said samples shall be made and the length of time samples of milk or cream shall be held after testing. (1951, c. 1121, s. 1.)

§ 106-267.3. **Revocation of license; proviso; hearing.**—The Commissioner of Agriculture shall have power to revoke any license granted under the provisions of this article, upon good and sufficient evidence that the provisions of this

article or the rules and regulations of the Commissioner of Agriculture are not being complied with: Provided, that before any license shall be revoked, an opportunity shall be granted the licensee, upon being confronted with the evidence, to show cause why such license should not be revoked. (1951, c. 1121, s. 1.)

§ 106-267.4. Representative average sample; misdemeanor, what deemed.—In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1.)

§ 106-267.5. Standard Babcock testing glassware; scales and weights.—In the use of the Babcock test all persons shall use the “standard Babcock testing glassware, scales, and weights.” The term “standard Babcock testing glassware, scales and weights” shall apply to glassware, scales and weights. It shall be unlawful for any person, firm, company, association, corporation or agent thereof to falsely manipulate, under-read or over-read the Babcock test or any other contrivance used for determining the quality of value of milk or cream where the value of said milk or cream is determined by the percentage of butterfat contained in the same or to make a false determination by the Babcock test or otherwise, or to falsify the record of such test or to pay on the basis of any test, measurement or weight except the true test, measurement or weight. (1951, c. 1121, s. 1.)

Editor’s Note.—It would seem that the of the section should read “quality or words “quality of value” near the middle value.”

§ 106-268. Definitions.—The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this article and section.

The term “adulteration” means:

(a) Failure to meet definitions and standards as established by the Board of Agriculture.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(c) If any substance has been substituted wholly or in part thereof.

(d) If it is adjudged to be unfit for human consumption.

The term “misbranded” means:

(a) If its labelling is false or misleading in any particular.

(b) If it is offered for sale under the name of another dairy product or frozen dessert.

(c) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of Agriculture, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing

and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department of Agriculture, acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this article or of this section have been violated, or whenever a duly authorized agent of the Department of Agriculture has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with micro-organisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this article or section not in compliance with this article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this article or section. In the event any "stop-sale" order shall be issued under the provisions of this article or section, the agents, inspectors or representatives of the Department of Agriculture shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1.)

§ 106-268.1. Penalties.—Any person, firm or corporation violating any of the provisions of this article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars

(\$100.00) and the cost of prosecution, or by imprisonment in the county jail for a period of not more than two months, or both such fine and imprisonment in the discretion of the court. (1951, c. 1121, s. 1.)

ARTICLE 30.

Farm Crop Seed Improvement Division.

§ 106-269. **Creation and purpose; election of director.**—There is hereby created in the Agricultural Extension Service of the State College of Agriculture and Engineering a division to be known as the Farm Crop Seed Improvement Division, and it shall be the duty and function of this Division to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. The Director of said Division shall be selected as the heads of other divisions of the State College of Agriculture and Engineering are selected and said Division shall have the necessary co-operation of all other members of the college staff of said State College of Agriculture and Engineering for the proper carrying out of the purposes of this article. (1929, c. 325, s. 1.)

§ 106-270. **State Board of Farm Crop Seed Improvement.**—The Governor, the Commissioner of Agriculture and the Dean of the School of Agriculture of the State College of Agriculture and Engineering, are hereby created a State Board of Farm Crop Seed Improvement. (1929, c. 325, s. 2.)

§ 106-271. **Powers of Board.**—The said Board shall have control, management and supervision of the production, distribution and certification of purebred crop seeds under the provisions of this article. (1929, c. 325, s. 3.)

§ 106-272. **Co-operation of other departments with Board; rules and regulations; fees for certification.**—In so far as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively co-operate with the said Board in carrying out the purpose of this article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, including rules and regulations fixing fees for certification and fixing the market price of certified seed, necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this article. (1929, c. 325, s. 4.)

§ 106-273. **North Carolina Crop Improvement Association.**—For the purpose of carrying out more fully the provisions of this article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

§ 106-274. **Certification of crop seeds.**—For the purposes of this article the certification of crop seeds hereunder shall be defined to be a guarantee by the North Carolina Crop Improvement Association herein provided for that the said seed conform to the stated origin, adaptation, variety name, variety purity, quality, germination, seed purity, and any other qualification necessary for the determining of the proper quality or value of crop seed. (1929, c. 325, s. 6.)

§ 106-275. **False certification of purebred crop seeds made misdemeanor.**—It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of cer-

tification, such as a blue tag or the word “certified” or both, on any package of seed, tubers, plants, or plant parts, nor shall the word “certified” be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

§ 106-276. **Supervision of certification of crop seeds.**—Certification of crop seeds in so far as it concerns the origin, adaptation, variety name, variety purity and quality shall be subject to the supervision of the director of the Division of Farm Crop Seed Improvement. Certification of crop seeds in so far as it concerns germination and purity tests shall be subject to the supervision of the State Department of Agriculture. The North Carolina Crop Improvement Association may certify any crop seeds when the certification thereof shall have been approved by both the Director of the Division of Farm Crop Seed Improvement and by the State Department of Agriculture. (1929, c. 325, s. 7.)

ARTICLE 31.

North Carolina Seed Law.

§ 106-277. **Short title.**—This article shall be known by the short title of “The North Carolina Seed Law.” (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725.)

Editor’s Note. — The 1945 and 1949 amendments rewrote this article as changed by the 1943 amendment.

§ 106-278. **Construction to conform with federal act.**—This article and the terms used therein shall be construed so as to conform in so far as possible with the construction placed upon the Federal Seed Act and regulations issued thereunder, and to effectuate its purpose to make uniform the seed laws of the states. (1945, c. 828; 1949, c. 725.)

§ 106-279. **Administered by Commissioner.**—This article shall be administered by the Commissioner of Agriculture of the State of North Carolina hereinafter referred to as the “Commissioner.” (1941, c. 114, s. 2; 1945, c. 828; 1949, c. 725.)

§ 106-280. **Definitions.**—When used in this article:

a. The term “person” includes a person, firm, partnership, corporation, company, society, association, trustee, agency, or receiver.

b. The term “agricultural seeds” shall include the seeds of grass, forage, cereal, fiber, cover crops and any other kinds of seed commonly recognized within this State as agricultural or field seeds, and mixtures of such seeds.

c. The term “vegetable seeds” shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this State.

d. The term “lot of seed” means a definite quantity of seeds identified by a lot number, or mark, every portion or bag of which is uniform, for the factors which appear in the labeling, within permitted tolerances.

e. The term “kind” means one or more related species or subspecies which singly or collectively is known by one common name; e. g., corn, wheat, lespedeza.

f. The term “variety” means a subdivision of a kind characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated from other sorts of the same kind; e. g., Dixie 17 Hybrid Corn, Redhart Wheat, Kobe Lespedeza.

g. The term “pure seed” shall include all seeds of the kind or kind and variety under consideration, whether shriveled, cracked, or otherwise injured, and pieces of broken seeds larger than one half the original size.

h. The term “inert matter” shall include broken seeds when one half in size or less; seeds of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seeds such as sterile dodder which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies and any matter other than seeds.

i. The term “other crop seed” shall include all seeds of plants grown in this State as crops, other than the kind or kind and variety included in the pure seed, when not more than five per cent (5%) of the whole of a single kind or variety is present, unless designated as weed seeds.

j. The term “weed seeds” shall include the seeds of all plants generally recognized within this State as weeds and shall include noxious weed seeds.

k. Noxious weed seeds are seeds disseminated in seed subject to this article and shall be divided into two classes, “prohibited noxious weed seeds” and “restricted noxious weed seeds,” defined as follows:

(1) “Prohibited noxious weed seeds” are the seeds of perennial weeds which not only reproduce by seed, but also spread by underground roots or stems and which, when established, are highly destructive and are not controlled in this State by cultural practices commonly used.

(2) “Restricted noxious weed seeds” are the seeds of such weeds as are very objectionable in fields, lawns, or gardens of this State, and are difficult to control by cultural practices commonly used.

l. The term “germination” means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

m. The term “hard seeds” means the percentage of seeds which, because of hardness or impermeability do not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned.

n. The term “mixture” means seeds consisting of more than one kind or variety, each present in excess of five per cent (5%) of the whole.

o. The term “labeling” includes all labels, or tags, and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

p. The term “advertisement” means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

q. The term “processing” means cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

r. The terms “certified seed,” “registered seed” and “foundation seed” mean seed that has been produced and labeled in accordance with the procedure and in compliance with the rules and regulations of an officially recognized seed certifying agency or association of agencies which have previously been approved by the Commissioner.

s. The term “hybrid seed corn” as applied to field corn, sweet corn, or pop corn means the first generation seed of a cross produced by controlling the pollination, and by combining two, three or four inbred lines, or by combining one inbred line or a single cross with an open pollinated variety: Provided the Board of Agriculture may in its discretion and upon recommendation of the Director of the Agricultural Experiment Station, based upon results of the official variety tests, redefine “hybrid seed corn.” Hybrid designations shall be treated as variety names.

t. The term "grower" shall mean any person who produces seed sold, offered, or exposed for sale directly as a landlord, tenant, sharecropper, or lessee.

u. The term "dealer" shall mean any person not classified as a "grower", buying, selling or offering for sale any seed for seeding purposes, and shall include any person who has seed grown under contract for resale for seeding purposes.

v. The term "North Carolina seed analysis tag" shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.

w. The term "non-coded" shall mean that the pedigree of the hybrid shall show the same designation for the hybrid as that originally assigned by the person developing the hybrid at the time it is first put in official test, production, or sale and each inbred line used in producing the hybrid shall show the same designation as that used when it was first used in a hybrid which was put into official test, production, or sale. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725.)

§ 106-281. **Tag and label requirements.**—Each container of agricultural or vegetable seed, sold, offered for sale, or exposed for sale within this State for seeding purposes, shall have attached thereto a North Carolina seed analysis tag or label on which is plainly written or printed the following information:

a. For agricultural seeds:

(1) Commonly accepted name of kind and variety of each agricultural seed component in excess of five per cent (5%) of the whole and the percentage by weight of each, in the order of its predominance.

(a) Where more than one component is required to be named, the word "mixture" or "mixed" shall be included in the name on the label.

(b) Hybrid seed corn shall be labeled with the name and/or number by which the hybrid is commonly designated.

(2) Lot number or other identification.

(3) Origin, if known; if unknown, so stated.

(4) Percentage by weight of inert matter.

(5) Percentage by weight of other crop seeds.

(6) Percentage by weight of all weed seeds.

(7) The name and number per pound of each kind of "restricted" noxious weed seeds.

(8) For each named agricultural seed the:

(a) Percentage of germination exclusive of hard seeds.

(b) Percentage of hard seeds, if present.

(c) Calendar month and year the test was completed to determine such percentages.

(9) Name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this State.

b. For vegetable seeds:

(1) Name of kind and variety of seed.

(2) Origin of snap beans; if unknown so stated.

(3) Per cent of germination with month and year of test.

(4) For seeds which germinate less than the standards last established by the Commissioner and Board of Agriculture under this article the following information shall be shown on the label:

(a) The words "BELOW STANDARD" in not less than eight-point type.

(b) Percentage of germination exclusive of hard seed.

(c) Percentage of hard seed, if present.

(d) The month and year of test.

(5) The name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

c. Exemptions:

(1) The label requirements for peanuts, cotton and tobacco seed shall be limited to:

(a) Lot number or other identification.

- (b) Origin, if known; if unknown, so stated.
- (c) Commonly accepted name of kind and variety.
- (d) Percentage of germination with month and year of test.
- (e) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(2) The label requirement as to the "origin" of snap beans shall not apply to seed in containers weighing less than ten (10) pounds.

(3) The label requirement as to the "germination" of vegetable seeds, when equal to or exceeding the standards last adopted by the Commissioner and Board of Agriculture under this article, shall not apply to seed in containers weighing less than ten (10) pounds.

(4) When the required analysis and other information regarding the seed is present on a seedsman's label or tag, accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of this section shall be deemed to have been complied with.

(5) No tag or label shall be required, unless requested, on seeds sold directly to, and in the presence of, the purchaser and taken from a bag or container properly labeled in accordance with the provisions of this section.

(6) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when it provides information in compliance with this section, and when attached to containers of seed duly certified by the said association, and when fees applicable to said tag have been paid to the Commissioner.

(7) No person shall be subject to the penalties of this article for having sold, offered, or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind and variety, when such seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving origin, kind and variety, and to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725.)

§ 106-282. Invoices and records.—Each person handling agricultural seed subject to this article shall keep for a period of two years complete records of each lot of agricultural and vegetable seed handled. When there is evidence of a violation of this article, invoices, records of purchases and sales, and any other records pertaining to the lot or lots involved shall be accessible for inspection by the Commissioner or his authorized agent in connection with the administration of this article at any time during customary business hours. (1945, c. 828; 1949, c. 725.)

§ 106-283. Prohibitions.—It shall be unlawful:

a. For any person within this State to sell, offer, or expose for sale any agricultural or vegetable seed for seeding purposes:

(1) Unless a license has been obtained in accordance with the provisions of this article.

(2) Unless the test to determine the percentage of germination shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, prior to sale or exposure for sale or offering for sale or transportation.

(3) Not labeled in accordance with the provisions of § 106-281, or having a false or misleading label, or having seed analysis tags attached to the containers of seed bearing thereon a liability or nonwarranty clause: Provided, that the provisions of § 106-281 shall not apply to seed being sold by a grower to a dealer, or to seed consigned to or in storage in a seed cleaning or processing establishment for cleaning or processing: Provided, further, that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this article.

(4) Containing prohibited noxious weed seeds, subject to tolerances and method of determination prescribed in the rules and regulations under this article.

(5) Seed that have been treated with poisonous material unless the label on such seed is plainly marked in not less than eight-point type with the information that they have been "poison treated."

b. For any person within this State:

(1) To detach, substitute, imitate, alter, deface or destroy any label provided for in this article, or in the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purpose of this article.

(2) To disseminate any false or misleading advertisement concerning agricultural or vegetable seed in any manner or by any means.

(3) To hinder or obstruct in any way a duly authorized person in the performance of his duties under this article.

(4) To fail to comply with a written order of the Commissioner or his authorized agent to withdraw from sale, or to move, or allow to be moved without written permission of the Commissioner or his authorized agent, any seed ordered removed from sale not complying with the requirements of this article.

(5) To sell, offer, or expose for sale any seed labeled "foundation seed," "registered seed," or "certified seed" unless it has been produced and labeled in compliance with the rules and regulations of a seed-certifying agency approved by the Commissioner.

(6) To sell, offer, or expose for sale any hybrid seed corn that has not been recorded annually with the Commissioner, giving the true, non-coded pedigree of the hybrid and the name of the person who developed each inbred line involved in the cross. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725.)

§ 106-284. Disclaimers and nonwarranties.—The use of a disclaimer or nonwarranty clause in any invoice, advertising, labeling, or written, printed, or graphic matter, pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution, or in any proceeding for confiscation of seeds, brought under the provisions of this article, or the rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725.)

§ 106-284.1. Administration.—For the purpose of carrying out the provisions of this article, it shall be the duty of the Commissioner or his authorized agents and they are hereby authorized:

A. To sample, inspect, make analysis of, and test agricultural and vegetable seeds transported, sold, offered, or exposed for sale within this State for seedling purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural or vegetable seeds are in compliance with the provisions of this article and the rules and regulations made and promulgated thereunder, and to notify promptly the person who transported, sold, or offered or exposed seed for sale, of any violation.

B. The Commissioner of Agriculture jointly with the Board of Agriculture, after public hearing immediately following ten (10) days' public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this article, which shall have the full force and effect of law. The Commissioner and Board of Agriculture shall adopt rules, regulations and standards as follows:

(1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerances to be followed in the administration of this article.

(2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.

(3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.

(4) Declaring the maximum number of "restricted" noxious weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale, and to define "low grade seed."

(5) Declaring the minimum percentage of germination permitted sale for "agricultural seeds."

(6) Declaring "germination standards" for vegetable seeds.

(7) Declaring "North Carolina grade standards" for agricultural seed.

(8) Prescribing the form and use of tags to be used in labeling seed.

(9) Prescribing standards for moisture content of seeds.

(10) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this article.

C. To enter upon any public or private premises during business hours in order to have access to seeds and to obtain such information and records as may be deemed necessary to enforce the provisions of this article and the rules and regulations promulgated thereunder.

D. To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the Commissioner or his authorized agent finds in violation of any of the provisions of this article or the rules and regulations made and promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with, or the seed otherwise legally disposed of, and a written release has been issued to the owner or custodian of said seed. However, any person repeatedly violating the labeling requirements of the laws shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed: Provided, that in respect to seeds which have been denied sale as provided in this paragraph, the owner or custodian of such seed shall have the right to appeal from such order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of the court: And provided, further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this article.

E. To revoke any seed license or to refuse to issue a seed license to any person after such person has been given a hearing by the Commissioner, notice of which hearing shall be given by registered mail at least ten (10) days before the date of such hearing, upon the Commissioner of Agriculture finding that such person has violated any of the provisions of this article or any rule or regulation adopted pursuant thereto: Provided, however, if the license of such person is revoked or refused he may appeal to the superior court within ten (10) days after the revocation or refusal of such license. Notice of such appeal shall be given to the Commissioner within said ten (10) days whose duty shall be to immediately cause a transcript of the evidence and pertinent documents of the proceedings to be filed with the clerk of the Superior Court for Wake County, and the hearing in the Superior Court shall be before the presiding judge and the cause may not be heard *de novo* but upon the record filed with the clerk by the Commissioner of Agriculture.

F. To establish and maintain a "State Seed Laboratory" with adequate facilities and qualified personnel for such inspection, sampling and testing as may be necessary for the efficient enforcement of this article.

G. To make or provide for making purity and germination tests of seeds, upon request, for farmers or seedmen, and to prescribe rules and regulations governing such testing.

H. To accept for purposes of recording annually the hybrid seed corn which has been tested or approved the previous year in the official variety tests of the North Carolina Agricultural Experiment Station in the section or sections of the State where it is to be offered for sale. The Commissioner, by and with the ad-

vice of the Director of the North Carolina Agricultural Experiment Station, shall refuse to accept for recording any hybrid corn seed which has been shown to be inferior, or which has not been tested, or is mislabeled with respect to genetic identity or has not been approved by the North Carolina Agricultural Experiment Station from the results of the official variety tests.

I. To publish or cause to be published at intervals information covering the findings of the State Seed Laboratory.

J. To co-operate with the United States Department of Agriculture in seed law enforcement. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725.)

§ 106-284.2. Seizure.—If the Commissioner of Agriculture has reason to believe that any agricultural or vegetable seeds fail to comply with the provisions of this article, he may apply for a writ of seizure to any court of competent jurisdiction in the county in which such seed is located. If the trial judge finds, after having heard the contentions of both the Commissioner and the person claiming title to such seed, that such seed does not meet the requirements of this article or rules and regulations adopted pursuant thereto, he may order the condemnation of such seed and require it to be disposed of in any manner consistent with the quality of the seed and the laws of the State. (1945, c. 828; 1949, c. 725.)

§ 106-284.3. Funds for expenses; licensing; seed analysis tags; inspection stamps.—For the purpose of providing a fund to defray the expenses of the inspection, examination, analysis of seeds and enforcement of the provisions of this article:

A. Each seed dealer selling, offering, or exposing for sale in this State, any agricultural or vegetable seed for seeding purposes, shall purchase from the Commissioner for two cents each, official North Carolina seed analysis tags and shall attach a tag to each container holding ten pounds or more of seed.

B. Each seed dealer selling, offering, or exposing for sale in, or exporting from, this State, any agricultural or vegetable seeds, other than packet or package seeds, for seeding purposes, shall register with the Commissioner his name and shall obtain a license annually on January 1st of each year, and shall pay for such license as follows:

(1) Twenty-five dollars (\$25.00), if a wholesaler, or a wholesaler and retailer.

(2) Ten dollars (\$10.00), if a retailer with sales in excess of one hundred dollars (\$100.00), for the calendar year. Each branch of any wholesaler or retailer shall be required to obtain a retail license.

(3) One dollar (\$1.00), if a retailer at a permanent location with sales not in excess of one hundred dollars (\$100.00): Provided, that if and when the seed sales for the calendar year shall exceed one hundred dollars (\$100.00), application must be made for a ten dollar (\$10.00) license, credit to be given for the one dollar (\$1.00) license previously secured.

C. A one dollar (\$1.00) inspection stamp shall be purchased from the Commissioner for each seventy-two (72) dozen packets or packages of vegetable or flower seeds, or fraction thereof. The said stamp shall be secured by the producer, grower, jobber or other person, firm or corporation shipping such seed into the State before shipment to agent or retailer, and shall be furnished to said agent or retailer for attachment to display case: Provided, also, that any producer, grower, jobber or other person, firm, or corporation, residing within this State shall secure said stamp before furnishing any such seed to any agent or retailer within the State for resale. The said agent or retailer is made responsible for obtaining said stamp which shall be attached to the display case before the seed are offered or exposed for sale, and shall expire at the end of the calendar year for which issued: Provided, further that in cases where package seed of one kind or variety are offered or exposed for sale in boxes or display cases not in excess of six (6) dozen packages, a ten cent (10c) stamp shall be purchased from the Commissioner and attached to said box or display case.

D. No owner or operator of any harvester or threshing machine operating on a

share basis and selling only the seed obtained in this manner shall come under the provisions of this section. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725.)

Editor's Note.—The 1947 amendment increased the price of tags from one cent to two cents each.

§ 106-284.4. Violations and prosecutions.—Any person, firm or corporation violating any provision of this article or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than five hundred dollars (\$500.00) or be imprisoned for not more than six (6) months, or both.

When the Commissioner of Agriculture finds that this article or the rules and regulations thereunder have been violated, as shown by tests, examination or analysis, he shall give notice to the person charged with violating this article, designating a time and place for a hearing. The person involved shall have the right to introduce evidence either in person or by agent or attorney. If after said hearing, or without a hearing in case said person fails or refuses to appear, the Commissioner decides that the evidence warrants prosecution, he, or his duly authorized agent or agents, may institute proceedings in a court of competent jurisdiction against such person. The sworn statement of the analyst shall be admitted as evidence in any court of this State in any proceeding instituted under this article, but upon motion of the accused, such analyst shall be required to appear as a witness and be subject to cross-examination.

When the provisions of this article have been fully complied with regarding any seeds which have been withdrawn from sale or have been ordered by the Commissioner to be disposed of for other than seeding purposes, the Commissioner, in his discretion, in writing may release the same for sale upon the payment of all costs and expenses incurred by the Department of Agriculture in any proceeding connected with such withdrawal. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725.)

ARTICLE 31A.

Seed Potato Law.

§ 106-284.5. Title.—This article shall be known as the Seed Potato Law. (1947, c. 467, s. 1.)

§ 106-284.6. Purposes; definitions and standards.—In order to improve farming in North Carolina and to enable potato growers to secure higher quality Irish potatoes and sweet potatoes and parts thereof for the purpose of propagation, and in order to prevent the spread of diseases affecting the future stability of the potato industry and the general welfare of the public, the following definitions and standards are hereby adopted:

“Certified” sweet potatoes and Irish potatoes and parts thereof for propagation uses shall mean sweet potatoes and Irish potatoes and parts thereof which conform to the standards adopted by the State Board of Agriculture, which shall conform to the standards fixed by the International Crop Improvement Association in classifying and determining what shall constitute “certified” potatoes for propagation uses.

“U. S. No. 1” Irish potatoes and/or sweet potatoes when the same are intended to be used for propagation purposes shall mean Irish and/or sweet potatoes which conform to the standards issued by the United States Department of Agriculture for “U. S. No. 1” potatoes when the same are intended to be used for propagation purposes. (1947, c. 467, s. 2.)

§ 106-284.7. Unlawful to sell seed potatoes not conforming to standards; rules and regulations.—It shall be unlawful for any person, firm or corporation to pack for sale, offer or expose for sale, or ship into this State for such

purposes, or sell, any Irish potatoes, sweet potatoes or parts thereof intended for propagation purposes, which do not conform to the standards of "certified" and "U. S. No. 1" potatoes set out in § 106-284.6.

The State Board of Agriculture is hereby authorized to make such reasonable rules and regulations as may be necessary to carry out the purposes of this article. (1947, c. 467, s. 3.)

§ 106-284.8. Employment of inspectors; prohibiting sale.—The Board of Agriculture is authorized to employ qualified inspectors to assist in the enforcement of laws and regulations affecting the distribution and sale of Irish potatoes and sweet potatoes and parts thereof intended for propagation purposes, and may prohibit the sale for propagation purposes of such potatoes which fail to meet the standards set out in § 106-284.6, and which have not been produced and labeled in accordance with the provisions of this article or rules and regulations adopted pursuant thereto. (1947, c. 467, s. 4.)

§ 106-284.9. Inspection; interference with inspectors; "stop sale" orders.—To effectively enforce the provisions of this article, the Commissioner of Agriculture shall require the inspectors to inspect Irish and sweet potatoes and parts thereof shipped into, possessed, sold or offered for sale within this State for the purpose of propagation, and may enter any place of business, warehouse, common carrier or other place where such potatoes are stored or being held, for the purpose of making such inspection; and it shall be unlawful for any person, firm or corporation in custody of such potatoes or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections. When the Commissioner or his authorized inspectors find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this article or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for propagation purposes any potatoes with respect to which such order has been issued. Such "stop sale" order shall not prevent the sale of any such potatoes for other than propagation purposes. (1947, c. 467, s. 5.)

§ 106-284.10. Authority to permit sale of substandard potatoes.—Notwithstanding any other provisions of this article, the State Board of Agriculture is authorized and directed when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in its discretion, may seem necessary, the sale for propagation purposes of potatoes which do not meet the standards set out in § 106-284.6, but which do meet such other lower standards as the Board of Agriculture may describe. (1947, c. 467, s. 6.)

§ 106-284.11. Sale of potatoes by grower to planter with personal knowledge of growing conditions.—Nothing in this article shall prohibit the sale, for propagation purposes in this State, of Irish or sweet potatoes or parts thereof grown within this State when sold by the grower thereof to a planter having personal knowledge of the conditions under which such potatoes were grown. (1947, c. 467, s. 7.)

§ 106-284.12. Violation a misdemeanor; notice to persons violating article; opportunity of hearing; duties of solicitors.—Any person, firm or corporation violating any of the provisions of this article or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the person, firm or corporation if same be known. Any party so notified shall be given an opportunity

to be heard under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the inspection was made, and furnish that officer with a copy of the results of the inspection of such Irish potatoes, sweet potatoes, or parts thereof duly authenticated by the inspector making such inspection, under the oath of such inspector. It shall be the duty of the several solicitors of the superior courts of the State and the solicitors of inferior courts to prosecute any case involving the violation of the provisions of this article when requested to do so by the Commissioner of Agriculture. (1947, c. 467, s. 8.)

§ 106-284.13. **Article 30 not repealed.**—Nothing in this article shall be construed as repealing article 30 of chapter 106 of the General Statutes, but all other laws and clauses of laws in conflict with the provisions of this article are repealed to the extent of such conflict. (1947, c. 467, s. 9.)

ARTICLE 32.

Linseed Oil.

§ 106-285. **Inspection and analysis authorized.**—For the purpose of protection of the people of the State from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the Board of Agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the State obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the Department of Agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this article or is otherwise offered for sale in violation of this article. (1917, c. 172, s. 1; C. S., s. 4832.)

§ 106-286. **Raw and boiled linseed oil defined.**—The term “raw linseed oil” as used herein shall be construed to mean the oil obtained wholly from commercially pure linseed or flaxseed, and the term “boiled linseed oil” as used herein shall be construed to mean linseed oil that has been heated in the process of its manufacture to a temperature of not less than two hundred and twenty-five degrees Fahrenheit. (1917, c. 172, s. 2; C. S., s. 4833.)

§ 106-287. **Adulterated linseed oil defined.**—For the purpose of this article linseed oil shall be deemed to be adulterated if it be not wholly the product of commercially pure and well cleaned linseed or flaxseed, and unless the oil also fulfills the requirements of the chemical test for pure linseed oil, described in the edition of the United States Pharmacopoeia for the year nineteen hundred. (1917, c. 172, s. 3; C. S., s. 4834.)

§ 106-288. **Sale of prohibited products; statement required of dealer.**—No person, firm, or corporation, by himself or agent or as the agent of any other person, firm, or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell under the name of raw linseed oil or boiled linseed oil, or under any name or device that suggests raw or boiled linseed oil, any article which is not wholly the product of commercially pure linseed or flaxseed, or that is adulterated or misbranded within the meaning of this article, except as is hereinafter provided, and any manufacturer, wholesaler, or jobber desiring to do business in the State shall file with the Commissioner of Agriculture a statement to that effect and furnish the name of the oil or oils which he proposes to sell by sample or otherwise, and that the oil or oils will comply with the requirements of this article. (1917, c. 172, s. 4; C. S., s. 4835.)

§ 106-289. Drying agents; label to state name and percentage.—Boiled linseed oil which has been heated to a temperature of not less than two hundred and twenty-five degrees Fahrenheit may contain drying agents not to exceed four per cent by volume, provided that the name and per cent of each drying agent present be plainly stated in connection with the name of the oil on the receptacle containing same: and Provided further, that the statement is printed in letters that meet the requirements of the regulations adopted by the Board of Agriculture under this article. (1917, c. 172, s. 5; C. S., s. 4836.)

§ 106-290. Compounds, imitations, and substitutes regulated.—Nothing in this article shall be construed to prohibit the sale of compound linseed oil, or imitation linseed oil, or any substance to be used as a substitute for linseed oil, provided the receptacle containing same shall be plainly and legibly stamped, stenciled, or marked compound linseed oil, or imitation oil, or with the name of the substance to be used for linseed oil, as the case may be: and Provided further, that the name is stenciled or marked on the container of same in a manner that will meet the requirements of the regulations adopted by the Board of Agriculture under this article. (1917, c. 172, s. 6; C. S., s. 4837.)

§ 106-291. Containers to be marked with specified particulars.—Before any raw linseed oil or any boiled linseed oil or any boiled linseed oil with drying agents added or any compound linseed oil or any imitation linseed oil or any other substance used or intended to be used as a substitute for linseed oil shall be sold or offered for sale in this State, the container in which same is kept for sale or sold shall have distinctly, legibly, and durably painted, stamped, stenciled, or marked thereon the true name of such oil or substance, setting forth in bold-face capital letters that meet the regulations prescribed by the Board of Agriculture, whether it be raw linseed oil or boiled linseed oil with drying agent added, or a compound linseed oil or an imitation linseed oil or a substitute for linseed oil, as the case may be; and the container, if a wholesale package, shall also bear the name and address of the manufacturer or jobber of such oil. (1917, c. 172, s. 7; C. S., s. 4838.)

§ 106-292. Entry for samples authorized.—The inspectors or agents of the Department of Agriculture, authorized to make inspection under this article, shall have authority, during business hours, to enter all stores, warehouses, or any other place where products named in this article are stored or sold or offered for sale, for the purpose of inspection and obtaining samples of such products. (1917, c. 172, s. 8; C. S., s. 4839.)

§ 106-293. Refusing samples or obstructing enforcement of article forbidden.—Every person who offers for sale or delivers to a purchaser any article named in this article shall furnish, within business hours and upon the payment or tender of the selling price, a sample of such product to any person duly authorized to secure the same, and who shall apply to such vender for such sample of such article in his possession; and any dealer or vender who refuses to comply, upon demand, with the requirements of this section, or any person who shall impede, hinder, or obstruct or otherwise prevent or attempt to prevent any chemist, inspector, or agent of the Department in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1917, c. 172, s. 8; C. S., s. 4840.)

§ 106-294. Violations of article a misdemeanor.—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense and for each subsequent offense in the discretion of the court. (1917, c. 172, s. 9; C. S., s. 4841.)

§ 106-295. **Forfeiture for unauthorized offer; disposal of proceeds.**—The oil offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizer; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the Department of Agriculture in executing the provisions of this article. (1917, c. 172, s. 9; C. S., s. 4842.)

§ 106-296. **Commissioner to notify solicitor of violations and certify facts.**—If it shall appear from the inspection or other examination of oils that any of the provisions of this article have been violated, besides the action above provided for, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish the officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1917, c. 172, s. 10; C. S., s. 4843.)

§ 106-297. **Solicitor to prosecute.**—It shall be the duty of the solicitor to prosecute such cases for fines and penalties provided for in this article in courts of competent jurisdiction. (1917, c. 172, s. 10; C. S., s. 4844.)

§ 106-298. **Inspection tax.**—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article there shall be paid to the Commissioner of Agriculture an inspection tax of one-half cent per gallon for any and all linseed oil or compound linseed oil or any substance used or intended to be used as a substitute for linseed oil, which payment shall be made before the delivery of such oil to any agent, retail dealer, or consumer in this State. (1917, c. 172, s. 11; C. S., s. 4845.)

§ 106-299. **Tax tags.**—Each can, barrel, tank, or other container of oils named in this article shall have attached thereto an inspection tag or stamp stating that the inspection charges specified in this article have been paid; and the Commissioner of Agriculture, with the advice and consent of the Board, is hereby authorized to prescribe a form for such tags or stamps: Provided, that they shall be such as to meet the requirements of the trade of linseed oil. (1917, c. 172, s. 11; C. S., s. 4846.)

§ 106-300. **Refilling containers and misuse of tags prohibited.**—The refilling of a container bearing an inspection tag or stamp on which the inspection tax has not been paid or the use of an inspection tag or stamp a second time shall constitute a violation of this article. (1917, c. 172, s. 12; C. S., s. 4847.)

§ 106-301. **Rules to enforce article; misdemeanor.**—The Board of Agriculture is hereby authorized to adopt such rules and regulations in regard to handling linseed oil, refilling containers, and use of inspection tags or stamps a second time, as will insure the enforcement of the provisions of this article, and a violation of the said rules or regulations shall constitute a violation of this article. (1917, c. 172, s. 13; C. S., s. 4848.)

§ 106-302. **Dealer released by guaranty of wholesaler.**—No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the manufacturer, jobber, wholesaler, or other party from whom he purchased such article, designating it, to the effect that the same is not adulterated or misbranded within the meaning of this article. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such cases said party or parties, if in this State, shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular manufac-

turer, jobber, or wholesaler, or for the sale of oil which is not properly labeled, branded, stamped, or tagged, or on which the inspection tax has not been paid. (1917, c. 172, s. 14; C. S., s. 4849.)

ARTICLE 33.

Adulterated Turpentine.

§ 106-303. **Sale of adulterated turpentine misdemeanor.**—If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned for thirty days. (1897, c. 482; Rev., s. 3830; C. S., s. 5089.)

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. **Proclamation of livestock quarantine.**—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock from any state where there is known to prevail contagious or infectious diseases among the livestock of such state. (1915, c. 174, s. 1; C. S., s. 4871.)

§ 106-305. **Proclamation of infected feedstuff quarantine.**—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any hay, feedstuff, or other article dangerous to livestock as a carrier of infectious or contagious disease from any state where there is known to prevail contagious or infectious disease among the livestock of such state. (1915, c. 174, s. 2; C. S., s. 4872.)

§ 106-306. **Rules to enforce quarantine.**—Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock in this State. (1915, c. 174, s. 3; C. S., s. 4873.)

Cross Reference. — See also, § 106-22, par. 3.

Cattle Ticks.—The regulation of a quarantine district laid off and enforced in pursuance of section 106-22, par. 3, and this

section, for the eradication of ticks on cattle is a reasonable and valid regulation. *State v. Hodges*, 180 N. C. 751, 105 S. E. 417 (1920).

§ 106-307. **Violation of proclamation or rules.**—Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1915, c. 174, s. 4; C. S., s. 4874.)

§ 106-307.1. **Serums, vaccines, etc., for control of animal diseases.**—The North Carolina Department of Agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal diseases. The resale of said serums, viruses, vaccines, bio-

logics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1.)

Editor's Note. — For comment on this and the five following sections, see 21 N. C. Law Rev. 323.

§ 106-307.2. Reports of infectious disease in livestock to State Veterinarian.—All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock. (1943, c. 640, s. 2.)

§ 106-307.3. Quarantine of infected or inoculated livestock. — Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease shall be quarantined by the State Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or organism shall be quarantined by the person inoculating same at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer virus or serum vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3.)

Cross Reference.—See § 106-401.

§ 106-307.4. Livestock brought into State. — All livestock transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4.)

Cross Reference.—See § 106-400.

Validity of Regulations. — Regulations relating to the importation of cattle, promulgated under authority of this section for the purpose of control of brucellosis or Bang's disease, if reasonable in their scope and incidence and not in conflict with federal regulations or statutes already preempting the field, are constitutional and

valid. *State v. Lovelace*, 228 N. C. 186, 45 S. E. (2d) 48 (1947).

A provision in the regulations promulgated under authority of this section, limiting the exception to the requirement of a health certificate for imported cattle solely to those consigned to a slaughterhouse, is reasonable and valid. *State v. Lovelace*, 228 N. C. 186, 45 S. E. (2d) 48 (1947).

§ 106-307.5. Appropriations for control of hog cholera, etc.—For the purpose of carrying out the provisions of §§ 106-307.1 to 106-307.6, the sum of twelve thousand and five hundred dollars (\$12,500.00) is hereby appropriated for the year one thousand nine hundred and forty-three-forty-four, and twelve thousand and five hundred dollars (\$12,500.00) for the year one thousand nine hundred and forty-four-forty-five, to come from the General Fund, which shall be in addition to any other funds appropriated for the control of hog cholera and other animal diseases. (1943, c. 640, s. 5.)

§ 106-307.6. Violation made misdemeanor.—Any person, firm or corporation who shall violate any provisions set forth in sections 106-307.1 to 106-307.4 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1943, c. 640, s. 6.)

Applied in *State v. Lovelace*, 228 N. C. 186, 45 S. E. (2d) 48 (1947).

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ 106-308. Appropriation to combat animal and fowl diseases.—If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious dis-

ease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture has no funds available to immediately meet the situation in co-operation with the United States Department of Agriculture, the Director of the Budget, upon approval of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture, to be used by the North Carolina Department of Agriculture in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of Part 4 of article 34 of chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation be spent for the purposes set forth in this section unless the funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; C. S., s. 4875; 1951, c. 799.)

Editor's Note.—The 1951 amendment rewrote this section and changed the heading of Part 2.

§ 106-309. Disposition of surplus funds.—If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the State Treasurer shall return such part of the appropriation as is not expended to the general fund, and the Commissioner of Agriculture shall furnish the Governor an itemized statement of the money expended, and all moneys set aside out of the State funds and used for the purpose of eradicating said disease under the provisions of this article shall be paid back to the State funds by the Department of Agriculture out of the first funds received by said agricultural department available for such purpose. (1915, c. 160, s. 2; C. S., s. 4876.)

Part 3. Hog Cholera.

§ 106-310. Burial of hogs dying natural death required.—It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten for each offense, at the discretion of the court. (1915, c. 225; C. S., s. 4877.)

Editor's Note. — For subsequent provision affecting this section, see § 106-403.

§ 106-311. Hogs affected with cholera to be segregated and confined.—If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them, so that

they shall not have access to any ditch, canal, branch, creek, river or other water-course which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1899, c. 47; 1903, c. 106; Rev., s. 3297; 1913, c. 120; C. S., s. 4490.)

§ 106-312. **Shipping hogs from cholera-infected territory.**—It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor. (1917, c. 203; C. S., s. 4491.)

§ 106-313. **Price of serum to be fixed.**—The Department of Agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C. S., s. 4878.)

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-314. **Manufacture and use of serum and virus restricted.**—It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the United States Department of Agriculture, Bureau of Animal Industry, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the United States Department of Agriculture, Bureau of Animal Industry, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be canceled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C. S., s. 4879.)

Local Modification.—Currituck: 1943, c. 199; Edgcombe: 1933, c. 139; Hyde: 1943, c. 693; Tyrrell: 1943, c. 693; Wilson: 1933, c. 58.

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-315. **Written permit from State Veterinarian for sale, use or distribution of hog cholera virus, etc.**—No hog cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the State unless permission has been given in writing by the State Veterinarian for such distribution, sale, or use, said permission to be canceled by the State Veterinarian when he deems same necessary: Provided, that the provisions of this section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1939, c. 360, s. 5.)

Local Modification.—Currituck: 1943, c. 159; Hyde: 1943, c. 693; Pasquotank: 1943, c. 358; Tyrrell: 1943, c. 693.

§ 106-316. Counties authorized to purchase and supply serum.—If the county commissioners of any county in the State deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C. S., s. 4881.)

§ 106-317. Regulation of transportation or importation of hogs into State.—To prevent the spread of hog cholera or other contagious or infectious hog disease in the State of North Carolina, it is hereby declared to be unlawful to transport or import, into this State any hog from any other state or territory for any purpose whatsoever, except upon the certificate of a duly licensed practicing veterinarian in the county or corresponding territorial district where the shipment originated that such hog is not infected with cholera or other contagious or infectious hog disease and is not transported or imported from a locality in which hog cholera or other contagious or infectious hog disease is prevalent; said certificate shall be issued within ten days prior to inspection: Provided, §§ 106-317 to 106-322 shall not apply to hogs brought into this State for immediate delivery to recognized slaughterhouses intended for immediate slaughter and hogs destined to public livestock markets operating under the supervision of the Department of Agriculture, but the burden shall be on the person transporting said hogs to prove the fact that such hogs are so destined: Provided, further, that the presentation of a way bill of lading on any shipment of hogs being transported by a common carrier shall satisfy this burden. (1941, c. 373, s. 1.)

§ 106-318. Veterinarian's certificate subject to inspection by police officers, etc.—Until delivery of any such hog, the owner or agent in charge shall at all times have in his possession said certificate of the licensed veterinarian and, upon request, he shall produce it for inspection by any police officer or inspection agent of this State or any county thereof. (1941, c. 373, s. 2.)

§ 106-319. Burial of hogs dying in transit.—It shall be the duty of any owner or agent having in charge any hog being transported or imported, into this State who shall, before delivery, lose a hog by any form of natural or unnatural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of said hog. (1941, c. 373, s. 3.)

§ 106-320. Duty of county commissioners to provide for inspections.—It shall be the duty of the county commissioners of each county of the State of North Carolina to provide sufficient and adequate inspection of hogs transported or imported into said county from any other state or territory, and to examine into the authenticity and sufficiency of the certificate of the veterinarian, and to refuse admittance into the county of any hog not certified as provided by §§ 106-317 to 106-322. (1941, c. 373, s. 4.)

§ 106-321. Violation of sections 106-317 to 106-322 made misdemeanor.—Any person violating the provisions of §§ 106-317 to 106-322 shall be guilty of a misdemeanor. (1941, c. 373, s. 5.)

§ 106-322. **Effect of sections 106-317 to 106-322.**—Sections 106-317 to 106-322 shall not repeal article 34, chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. **State to pay part of value of animals killed on account of disease.**—If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and para-tuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and para-tuberculosis to pay one-third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twelve dollars and fifty cents for any grade animal nor more than twenty-five dollars for any pure-bred animal. In the case of horses or mules destroyed for glanders to pay one-half of the appraised value, said half not to exceed one hundred dollars. (1919, c. 62, s. 1; C. S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2.)

Cross Reference.—As to provision that failure to kill animal affected with glanders constitutes a misdemeanor, see § 106-404.

Editor's Note. — The 1939 amendment made this section applicable to Bang's dis-

ease. Prior to the amendment the maximum payments mentioned in the proviso were twenty-five and fifty dollars, respectively.

§ 106-324. **Appraisal of cattle affected with Bang's disease and tuberculosis.**—Cattle affected with Bang's disease and tuberculosis and para-tuberculosis shall be appraised by three men—one to be chosen by the owner, one by the United States Bureau of Animal Industry, and one by the State Veterinarian. If the United States Bureau of Animal Industry is not represented, then the appraisers shall be chosen, one by the owner, one by the State Veterinarian, the third to be chosen by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; C. S., s. 4883; 1929, c. 107; 1939, c. 272, s. 1.)

Editor's Note.—The 1939 amendment inserted the words "Bang's disease and" near the beginning of the section.

§ 106-325. **Appraisal of animals affected with glanders; report.**—Animals affected with glanders shall be appraised by three men—one to be chosen by the owner, one to be chosen by the State Veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the State Veterinarian, and a copy sent to the State Veterinarian at once. (1919, c. 62, s. 3; C. S., s. 4884.)

§ 106-326. **Report of appraisal of cattle affected with Bang's disease and tuberculosis to State Veterinarian; contents.**—Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the State Veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the State Veterinarian: Provided, that the State Veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States Department of Agriculture. (1919, c. 62, s. 4; C. S., s. 4885; 1939, c. 272, ss. 1, 3.)

Editor's Note. — The 1939 amendment made this section applicable to cattle with Bang's disease, and added the proviso.

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis.—Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the State Veterinarian to be marketed, shall market the cattle within thirty days and shall obtain from the purchaser a report in triplicate. One copy to be sent to the State Veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; C. S., s. 4886; 1939, c. 272, s. 1.)

Editor's Note. — The 1939 amendment made this section applicable to cattle with Bang's disease.

§ 106-328. Report on salvage.—When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the State Veterinarian, in triplicate shall be made, signed by the owner and the United States Bureau of Animal Industry or State inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C. S., s. 4887.)

§ 106-329. Compensation when killing ordered.—Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the State Veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the State Veterinarian. (1919, c. 62, s. 7; C. S., s. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens.—When animals have been destroyed pursuant to this article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C. S., s. 4889.)

§ 106-331. State not to pay for feed of animals ordered killed.—Expense for the care and feeding of animals held for slaughter shall not be paid by the State. (1919, c. 62, s. 9; C. S., s. 4890.)

§ 106-332. Disinfection of stockyards by owners.—Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States Bureau of Animal Industry or State Veterinarian. (1919, c. 62, s. 10; C. S., s. 4891.)

§ 106-333. Payments made only on certain conditions.—No payments shall be made for any animal slaughtered in the following cases:

1. If the owner does not disinfect premises, etc., as directed by an inspector of the United States Bureau of Animal Industry or the State Veterinarian.
2. For any animals destroyed where the owner has not complied with all lawful quarantine regulations.
3. Animals reacting to a test not approved by the State Veterinarian.
4. Animals belonging to the United States.

5. Animals brought into the State in violation of the State laws and regulations.

6. Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.

7. Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the State.

8. Animals which have not been within the State of North Carolina for at least one hundred and twenty days prior to the discovery of the disease.

9. Where owner does not use reasonable care in protecting animals from disease.

10. Where owner has failed to submit the necessary reports as required by this article.

11. Any unregistered bull. (1919, c. 62, s. 11; C. S., s. 4892; 1939, c. 272, s. 4.)

Editor's Note. — The 1939 amendment added subsection 11.

§ 106-334. Owner's claim for indemnity supported by reports.—The owner must present his claim for indemnity to the State Veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the State or United States Bureau of Animal Industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; C. S., s. 4893; 1939, c. 272, s. 1.)

§ 106-335. State Veterinarian to carry out provisions of article; how moneys paid out.—The State Veterinarian is authorized, himself or by his representative, to do all things specified in this article. All moneys authorized to be paid shall be paid from the State treasury on warrants approved by the auditor, and the State Treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C. S., s. 4894.)

Part 5. Tuberculosis.

§ 106-336. Animals reacting to tuberculin test.—All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C. S., s. 4895(a).)

§ 106-337. Animals to be branded.—All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T", not less than two inches high, and promptly report the same to the State Veterinarian. (1921, c. 177, s. 2; C. S., s. 4895(b).)

§ 106-338. Quarantine; removal or sale; sale and use of milk.—The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C. S., s. 4895(c).)

§ 106-339. **Seller liable in civil action.**—Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C. S., s. 4895(d).)

Cross Reference.—See also, §§ 14-364, 106-403, 106-404.

§ 106-340. **Responsibility of owner of premises where sale is made.**—When cattle are sold or otherwise disposed of in this State by a nonresident of this State, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the Department of Agriculture. (1921, c. 177, s. 5; C. S., s. 4895(e).)

§ 106-341. **Sale of tuberculin.**—No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C. S., s. 4895(f).)

§ 106-342. **Notice to owner of suspected animals; quarantine.**—When the State Veterinarian receives information, or has reason to believe that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within ten days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with, and the quarantine canceled by the State Veterinarian. (1921, c. 177, s. 7; C. S., s. 4895(g).)

§ 106-343. **Appropriations by counties; elections.**—The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to co-operate effectively with the State and federal departments of agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in ten days after said appropriation is voted, one-fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in §§ 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and co-operative tuberculosis eradication shall be taken up with the State and federal departments of agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C. S., s. 4895(h).)

§ 106-344. **Petition for election if commissioners refuse co-operation; order; effect.**—If the board of commissioners of any county should exercise their discretion and refuse to co-operate as set out in § 106-343, then if a petition is presented to said board by one-fifth of the qualified voters of the county requesting that an election be held as provided in § 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall

order said election to be held in the way provided in § 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall co-operate with the State and federal governments as herein provided. (1921, c. 177, s. 9; C. S., s. 4895(i).)

§ 106-345. **Importation of cattle.**—Whenever a county board shall co-operate with the State and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C. S., s. 4895(j).)

§ 106-346. **Amount of appropriation.**—When co-operative tuberculosis eradication shall be taken up in any county as provided for in §§ 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one-half of the expense of said co-operative tuberculosis eradication. (1921, c. 177, s. 11; C. S., s. 4895(k).)

§ 106-347. **Qualified veterinarian.**—The words "qualified veterinarian" which appear in §§ 106-336 to 106-350 shall be construed to mean a veterinarian approved by the State Veterinarian and the chief of the United States Bureau of Animal Industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C. S., s. 4895(l).)

§ 106-348. **Rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis. (1921, c. 177, s. 13; C. S., s. 4895(m).)

§ 106-349. **Violation of law a misdemeanor.**—Any person or persons who shall violate any provision set forth in §§ 106-336 to 106-350, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1921, c. 177, s. 14; C. S., s. 4895(n).)

§ 106-350. **Sale of tubercular animal a felony.**—Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in § 106-338 shall be guilty of a felony, and punishable by imprisonment of not less than one year or not more than five years in the State prison. (1921, c. 177, s. 15; C. S., s. 4895(o).)

Part 6. Cattle Tick.

§ 106-351. **Systematic dipping of cattle or horses.**—Systematic dipping of all cattle or horses infested with or exposed to the cattle tick, (*Margaropus annulatus*) shall be taken up in all counties or portions of counties that shall at anytime be found partially or completely infested with the cattle tick (*Margaropus annulatus*) under the direction of the State Veterinarian acting under the authority as hereinafter provided in §§ 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the State board of Agriculture not in conflict with §§ 106-351 to 106-363. (1923, c. 146, s. 1; C. S., s. 4895(p).)

Editor's Note.—It is said in 1 N. C. Law Rev. 301, that this statute reinforces sections 106-22 and 106-306.

§ 106-352. **Counties not embraced in quarantine zones.**—If it shall be determined by the State Veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (*Margaropus annulatus*), the county commissioners of said counties which

are partially or completely infested with the cattle tick (*Margaropus annulatus*) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (*Margaropus annulatus*) is completely eradicated and notice in writing of same is given by the State Veterinarian. (1923, c. 146, s. 3; C. S., s. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost.—The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (*Margaropus annulatus*) is completely eradicated and notice in writing of same is given by the State Veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of §§ 106-351 to 106-363, except §§ 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C. S., s. 4895(s).)

§ 106-354. Local State inspectors; commissioned as quarantine inspectors; salaries, etc.—The State Veterinarian shall appoint the necessary number of local State inspectors to assist in systematic tick eradication, who shall be commissioned by the Commissioner of Agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the services of any of said inspectors is not satisfactory to the State Veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; C. S., s. 4895(t); 1925, c. 275, s. 6.)

Editor's Note.—The 1925 amendment struck out a provision making an appropriation to pay the salaries of inspectors.

§ 106-355. Enforcement of compliance with law.—If the county commissioners shall fail, refuse or neglect to comply with the provisions of §§ 106-351 to 106-363, the State Veterinarian shall apply to any court of competent jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of §§ 106-351 to 106-363. (1923, c. 146, s. 6; C. S., s. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period.—Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every fourteen days in a vat properly charged with arsenical solution as recommended by the United States Bureau of Animal Industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (*Margaropus annulatus*) in such county or counties. (1923, c. 146, s. 7; C. S., s. 4895(v).)

§ 106-357. Service of notice.—Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C. S., s. 4895(w).)

§ 106-358. Cattle placed in quarantine; dipping at expense of owner.—Cattle, horses or mules infested with or exposed to the cattle tick (*Margaropus annulatus*) the owner or owners of which, after five days' written notice from a

quarantine inspector of such animals as is provided for in § 106-357, shall fail or refuse to dip such animals regularly every fourteen days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C. S., s. 4895(x).)

§ 106-359. Expense of dipping as lien on animals; enforcement of lien.—Any expense incurred in the enforcement of § 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff of the county after twenty days' advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within thirty days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within twelve months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C. S., s. 4895(y).)

§ 106-360. Duty of sheriff.—It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of §§ 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable at the discretion of the court. (1923, c. 146, s. 11; C. S., s. 4895(z).)

§ 106-361. Rules and regulations.—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C. S., s. 4895(aa).)

§ 106-362. Penalty for violation.—Any person, firm or corporation who shall violate any provisions set forth in §§ 106-351 to 106-363 or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provision of §§ 106-351 to 106-363 shall be guilty of a misdemeanor. (1923, c. 146, s. 13; C. S., s. 4895(bb).)

§ 106-363. Damaging dipping vats a felony.—Any person or persons who shall willfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a felony and upon conviction shall be imprisoned not less than two years nor more than ten years in the State prison. (1923, c. 146, s. 14; C. S., s. 4895(cc).)

Part 7. Rabies.

§ 106-364. **Definitions.**—The following definitions shall apply to §§ 106-364 to 106-387:

(a) The term “dog” shall mean dogs of any sex.

(b) The term “vaccination” shall be understood to mean the administration of anti-rabic vaccine approved by the Department of Agriculture, and the United States Bureau of Animal Industry, non-virulent and potent as shown by the required tests of the United States Bureau of Animal Industry. (1935, c. 122, s. 1; 1949, c. 645, s. 1.)

Editor's Note. — The 1949 amendment made changes in subsection (b).

§ 106-365. **Annual vaccination of all dogs.**—In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of every dog to have same vaccinated annually by a rabies inspector in accordance with the provisions of §§ 106-364 to 106-387. And it shall be the further duty of the owner of said dog to properly restrain same and to assist the rabies inspector in administering the vaccine. (1935, c. 122, s. 2; 1941, c. 259, s. 2.)

Local Modification.—Person and Union: inserted at the beginning of this section the words: “In all counties where a campaign of vaccination is being conducted.”

Editor's Note.—The 1941 amendment in-

§ 106-366. **Appointment and qualifications of rabies inspectors; preference to veterinarians.**—It shall be the duty of the county health officers of the several counties, and in those counties where health officers are not employed, it shall be the duty of the board of county commissioners, to appoint, subject to the approval and confirmation of the Commissioner of Agriculture of North Carolina, a sufficient number of rabies inspectors to carry out the provisions of §§ 106-364 to 106-387. In the appointment of rabies inspectors preference shall always be given to graduate licensed veterinarians and said veterinarians may be appointed to carry out the provisions of §§ 106-364 to 106-387 in the entire county. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience can demonstrate the ability to perform the duties required under §§ 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3.)

Local Modification.—Davie: 1937, c. 255.
Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment rewrote this section.

§ 106-367. **Time of vaccination.**—The vaccination of all dogs in the counties shall begin annually on April first and shall be completed within ninety (90) days from the date of beginning the vaccination in the several counties: Provided, however, that the county health officer, in those counties having health officers, and the county commissioners, in those counties which do not have health officers, may require the vaccination of all dogs within any area of said county when such vaccination is deemed necessary for the control of rabies. (1935, c. 122, s. 4; 1949, c. 645, s. 2.)

Editor's Note. — The 1949 amendment added the proviso.

§ 106-368. **Publication of notice of date of vaccination; duty of owner.**—The rabies inspector shall give due notice through the newspaper of the county and by posting notice at the courthouse and at one or more public places in each township of the county of the date on which the vaccination of all dogs shall be started in a county and it shall be the duty of the owner of every dog in said county to have said dog, or dogs, at either of two or more points in the township for the purpose of having same vaccinated, said points

and date to be designated by the rabies inspector. (1935, c. 122, s. 5; 1941, c. 259, s. 4.)

Editor's Note. — The 1941 amendment substituted the words "rabies inspector" for "Department of Agriculture."

§ 106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination.—The State Department of Agriculture shall purchase the proper rabies vaccine provided for in §§ 106-364 to 106-387 and supply same to the rabies inspector at a cost of not to exceed fifty cents per dose, and a uniform metal tag, serially numbered and suitably lettered and to show the year issued. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259, s. 5.)

Editor's Note. — The 1941 amendment increased the cost of vaccine and made other changes.

§ 106-370. Notice to sheriff of each county and his duty to assist.—The rabies inspector shall notify the sheriff of the county of the date when the vaccination of dogs in said county shall begin and it shall be the duty of the sheriff and his deputies to assist the rabies inspector in the enforcement of §§ 106-364 to 106-387. (1935, c. 122, s. 7; 1941, c. 259, s. 6.)

Editor's Note. — The 1941 amendment for the words "Department of Agriculture" substituted the words "rabies inspector" "ture."

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.—When the rabies inspector has carried out the provisions of §§ 106-364 to 106-387 as to § 106-368 in all townships of the county, it shall be the duty of the sheriff with the assistance of the rabies inspector to make a thorough canvass of the county and frequently thereafter to determine if there are any dogs that are not wearing the metal tag provided for in § 106-369. If such dogs are found the sheriff shall notify the owner to have same vaccinated by a rabies inspector and to produce the certificate provided for in § 106-369, within three days. If the owner shall fail to do this he shall be prosecuted in accordance with the provisions of §§ 106-364 to 106-387. If the owner of a dog not wearing a tag cannot be found it shall be the duty of said officer to destroy said dog. (1935, c. 122, s. 8.)

Local Modification. — Forsyth: 1949, c. 622, s. 2; Guilford: 1949, c. 462, s. 1.

§ 106-372. Fee for vaccination; dog tax credit; penalty for late vaccination.—The rabies inspector shall collect from the owner of each dog vaccinated as provided for in § 106-368, not more than one dollar (\$1.00), to be fixed by the board of county commissioners for each dog, the same to be credited on the dog tax when certificate of vaccination is presented to the sheriff or tax collector of said county. Any owner who fails to have his dog vaccinated at the time the rabies inspector is in the township in which the owner resides as provided in § 106-368, shall have said dog vaccinated in accordance with § 106-371 and shall pay the rabies inspector the additional sum of twenty-five cents to be retained by him for each dog treated: Provided, that in cases where dogs are vaccinated in accordance with § 106-371, the total charge for such treatment shall not exceed one dollar (\$1.00) to be fixed by the board of county commis-

sioners, only fifty cents of which shall be credited on such dog tax. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 5.)

Local Modification.—Guilford: 1949, c. 462, s. 2; Person and Union: 1941, c. 259, s. 12½; Wilson: 1941, c. 259, s. 7.

Editor's Note.—The 1941 amendment rewrote this section. The 1949 amendment

struck out the words "seventy-five cents" and inserted in lieu thereof the words and figures "one dollar (\$1.00), to be fixed by the board of county commissioners."

§ 106-372.1. Rabies inspector to collect dog tax; fee for vaccination.

—The rabies inspector shall collect from the owner of each dog vaccinated as provided in § 106-368, the full amount of the tax imposed by § 67-5. The rabies inspector shall be furnished with forms of receipt books to be used in collecting such dog taxes and, at the time same is collected, shall send carbon copies thereof to the county auditor and to the sheriff or tax collector of the county and on the said receipt books shall be kept stubs provided for such purpose, the name of the taxpayer, the amount paid, and the date of collection. The rabies inspector shall, by the end of each month in which said taxes are collected, pay over to the sheriff or tax collector of the county the amount of dog taxes collected by him after deducting therefrom for his services in vaccinating such dogs, seventy-five cents (75c) for each dog vaccinated and five cents (5c) for each dog vaccinated for his service in making such reports. The sheriff or tax collector of the county shall give the taxpayer credit on the tax books for the full amount of the tax so paid by the taxpayer: Provided, in cases where the dogs are vaccinated in accordance with § 106-371, the rabies inspector shall collect from the owner of the dog twenty-five cents (25c) additional for each dog vaccinated, which additional amount shall be retained by the inspector.

This section shall be in full force and effect in lieu of the provisions of § 106-372 in those counties in the State in which the boards of county commissioners shall, on or before the first day of July in any year, accept the provisions hereof as applicable to that county by resolution duly adopted and spread upon the minutes of the board, and thereafter the provisions of § 106-372 shall not be applicable to that county. Upon adoption of this provision, it shall be applicable for the year beginning January first thereafter, and shall thereafter remain in full force and effect.

The sheriff or tax collector of the county shall be, notwithstanding the provisions of this section, fully authorized and empowered to collect any taxes due by the taxpayer which have not been collected in the manner above provided. The boards of county commissioners are authorized to pay the premiums on the bonds required of rabies inspectors for the forthcoming of the dog taxes collected under the authority of this section, provided, that this section shall not apply to Alamance, Anson, Ashe, Bladen, Burke, Cabarrus, Catawba, Durham, Iredell, Madison, Pender, Pitt, Robeson, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry and Wilkes counties. (1945, c. 571.)

§ 106-373. Vaccination of dogs after annual vaccination period. —

It shall be the duty of the owner of any dog born after the annual vaccination of dogs in his county or any dog that was not six months old at the time of said annual vaccination to take the same when six months old to a rabies inspector for the purpose of having same vaccinated. The fee charged in such cases by the rabies inspector shall not exceed one dollar (\$1.00) per animal, to be fixed by the board of county commissioners. (1935, c. 122, s. 10, c. 344; 1941, c. 259, s. 8; 1949, c. 645, s. 6.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½; Wilson: 1941, c. 259, s. 8.

Editor's Note.—The 1941 amendment increased the maximum fee from fifty to

seventy-five cents. The 1949 amendment increased the fee to one dollar and added the words "to be fixed by the board of county commissioners."

§ 106-374. Vaccination and confinement of dogs brought into State.—All dogs shipped or otherwise brought into this State, except for exhibition purposes where the dogs are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompanied by a certificate issued by a qualified veterinarian showing that said dog is apparently free from rabies and has not been exposed to same and that said dog has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate. (1935, c. 122, s. 11.)

§ 106-375. Quarantine of districts infected with rabies.—The county health officer, and in those counties where health officers are not employed, the board of county commissioners, may declare quarantine against rabies in any designated district when in its judgment this disease exists to the extent that the lives of persons are endangered and all dogs in said district shall be confined on the premises of the owner or in a veterinary hospital: Provided, a dog may be permitted to leave the premises of the owner if on leash or under the control of its owner or other responsible person. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

Editor's Note.—The 1941 amendment substituted "county health officer" for "Department of Agriculture." And the 1949

amendment inserted the words "and in those counties where health officers are not employed, the board of county commissioners."

§ 106-376. Killing stray dogs in quarantine districts.—When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsible for their control, any police officer or deputy sheriff shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13.)

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated.—Every animal having rabies, and every animal known to have been bitten by another animal having rabies, shall be killed immediately by its owner or a peace officer: Provided that if any animal known to have been bitten by a dog having rabies, but which has not developed the disease, shall have been vaccinated in accordance with §§ 106-364 to 106-387 before being bitten, such animal shall be closely confined until it shall have been determined by the rabies inspector or a registered veterinarian that the animal has rabies, before it shall be required to be killed. (1935, c. 122, s. 14.)

§ 106-378. Confinement of suspected dogs.—Every person who owns or has possession of an animal which is suspected of having rabies or which has symptoms of or has been exposed to the disease, shall confine such animal at once in some secure place for at least three weeks and until released by a rabies inspector for the purpose of determining whether such animal has the disease. (1935, c. 122, s. 15; 1935, c. 344; 1941, c. 259, s. 10.)

Local Modification.—Person and Union: 1941, c. 259, s. 12½.

§ 106-379. Dogs having rabies to be killed; heads to be sent to laboratory.—Every animal, after it has been determined that it has rabies, shall be killed at once by a peace officer or its owner, and the head of every animal suspected of having rabies which may have died shall be properly prepared and sent at once to the laboratory approved by the State Board of Health. (1935, c. 122, s. 16.)

§ 106-380. Notice to county health officer and rabies inspector when person bitten; confinement of dog.—When a person has been bitten

by a dog or animal, which has rabies or which is suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to immediately notify the county health officer and give their names and addresses; and the owner or person having such dog or animal in his possession or under his control shall immediately notify the rabies inspector and shall securely confine said animal on his premises or surrender it to a veterinary hospital for inspection and observation. After the preliminary examination and observation the animal may be released in the custody of the owner to be kept under quarantine and observation for twenty-one (21) days, and until released by the rabies inspector, if the animal is found not to have rabies. (1935, c. 122, s. 17; 1941, c. 259, s. 11.)

Local Modification.—Person and Union: substituted "county health officer" for 1941, c. 259, s. 12½. "Department of Agriculture."

Editor's Note. — The 1941 amendment

§ 106-381. Confinement or leashing of vicious dogs.—When an animal becomes vicious and a menace to the public health the owner of such animal or person harboring or having such animal in his possession shall not permit such animal to run at large unless on leash in the care of a responsible person, or muzzled with a proper fitting muzzle, securely fastened to prevent such animal from biting a person or another animal. (1935, c. 122, s. 18.)

§ 106-382. Administration of law in cities and larger towns; co-operation with sheriffs.—In towns or cities with a population of five thousand (5000), or more, the responsibility for assistance in the enforcement of §§ 106-364 to 106-387 shall be with the public safety or police department of said town or city, and this department shall be subject to the same rules, regulations and penalties as the sheriffs of the several counties; and it shall further be the duty of the public safety or police department in towns or cities assisting in the enforcement of §§ 106-364 to 106-387 to co-operate with the sheriff of any county in the carrying out of the provisions of §§ 106-364 to 106-387 for a distance of one mile beyond the city limits. (1935, c. 122, s. 19.)

§ 106-383. Regulation of content of vaccine; doses.—Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold or offered for sale unless said rabies vaccine shall contain not less than twenty per cent (20%) of fixed virus material and be nonvirulent and potent as shown by the required tests of the United States Bureau of Animal Industry. Said rabies vaccine shall be recommended in doses of not less than five (5) c. c. each for dogs and other small animals; relatively larger doses being recommended for larger animals. (1935, c. 122, s. 20.)

§ 106-384. Law declared additional to other laws on subject.—The provisions of §§ 106-364 to 106-387 shall not be construed to repeal or change any laws heretofore enacted but shall be in addition thereto except insofar as said laws heretofore enacted and enforced shall actually conflict with the provisions of §§ 106-364 to 106-387 and prevent the proper enforcement of said provisions. And the said laws enacted and now in force shall remain in full force and effect except as they do actually conflict with the enforcement of the provisions of §§ 106-364 to 106-387 in which §§ 106-364 to 106-387 and the provisions thereof shall prevail. (1935, c. 122, s. 21.)

§ 106-385. Violation made misdemeanor.—Any person who shall violate any of the provisions of §§ 106-364 to 106-387 or any provision of any regulation of quarantine established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten (\$10.00) dollars or more than fifty (\$50.00) dollars, or to imprisonment of not less than

ten (10) days or more than thirty (30) days in the discretion of the court. (1935, c. 122, s. 23.)

§ 106-386. **Present dog tax limited.**—No county, city or town shall levy any additional taxes on dogs other than the tax now levied. (1935, c. 122, s. 24.)

§ 106-387. **Disposition of funds.**—Any money collected under the provisions of §§ 106-364 to 106-387 in excess of the cost of operations and enforcement shall become a part of the agricultural fund of the State of North Carolina. (1935, c. 190.)

Part 8. Bang's Disease.

§ 106-388. **Animals affected with, or exposed to Bang's disease, declared subject to quarantine, etc.**—It is hereby declared that the disease of animals known as Bang's disease, contagious abortion, abortion disease, bovine infectious abortion, or Bang's bacillus disease, is of a contagious and infectious character, and animals affected with, or exposed to, or suspected of being carriers of said disease shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1.)

§ 106-389. **"Bang's disease" defined; co-operation with the United States Department of Agriculture.**—Bang's disease shall mean the disease wherein an animal is infected with the Bang's bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with Bang's disease if it reacts to a serological test, or, if the Bang's bacillus has been found in the body or its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves between the ages of four and eight months, and older cattle, with strain nineteen Brucella vaccine in accordance with the recommendations of the United States Bureau of Animal Industry. Such vaccination shall be done under rules and regulations promulgated by the Department of Agriculture. The Committee of Agriculture may permit the sale of valuable animals that have reacted to an official Bang's test or are suspicious to same, provided such animals go direct to infected herds that have been vaccinated with strain nineteen Brucella vaccine, as provided for in this section, and are held under quarantine in accordance with the law and regulations covering. Such vaccinated animals shall be permanently identified by tattooing or other methods approved by the Committee of Agriculture and no indemnity shall be paid on any such vaccinated animal. It shall be the duty of the State Veterinarian to test all animals vaccinated with strain nineteen Brucella vaccine twelve months after the date of vaccination and regularly thereafter. All such vaccinated animals that show a positive reaction to an official Bang's test eighteen months or more after vaccination shall be considered as affected with Bang's disease and shall be branded with the letter "B" in accordance with the law covering. It shall be unlawful to sell, offer for sale, distribute or use strain nineteen Brucella vaccine or any other product containing living Bang's organisms, except as provided for in this section.

The control and eradication of Bang's disease in the herds of the State shall be conducted as far as funds of the Department of Agriculture will permit, and in accordance with the rules and regulations made by the said Department. Said Department of Agriculture is hereby authorized to co-operate with the United States Department of Agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2; 1945, c. 462, s. 1.)

Editor's Note. — The 1945 amendment deleted the words "or if it has been treated with a live culture of the Bang bacillus," formerly appearing at the end of the second sentence, and inserted the part of the first paragraph beginning with the third

sentence.

The words "Committee of Agriculture" appearing in the first paragraph of this section were most probably intended by the legislature to read "Commissioner of Agriculture."

§ 106-390. **Blood samples; diseased animals to be branded and quarantined; sale, etc.**—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and to report same to the State Veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the State Veterinarian. All dairy and breeding cattle over six months of age offered or sold at public sale, except for immediate slaughter, shall be negative to a Bang's test made within thirty days prior to sale and approved by the State Veterinarian. (1937, c. 175, s. 3; 1945, c. 462, s. 2.)

Editor's Note. — The 1945 amendment § 106-389 but it seems clear that this section added the last sentence. The amendatory tion was intended. act directed that the sentence be added to

§ 106-391. **Civil liability of vendors.**—Any person or persons who knowingly sell or otherwise dispose of, to another, an animal affected with Bang's disease shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4.)

Cross Reference.—For similar section, see § 106-339. For criminal provisions, see § 14-364.

§ 106-392. **Sales by nonresidents.**—When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-399 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5.)

§ 106-393. **Duties of State Veterinarian; quarantine for failure to comply with recommendations.**—When the State Veterinarian receives information, or has reason to believe that Bang's disease exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within ten days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with and the quarantine is canceled by the State Veterinarian. (1937, c. 175, s. 6.)

§ 106-394. **Co-operation of county boards of commissioners.**—The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to co-operate effectively with the State and federal departments of agriculture in the eradication of Bang's disease in their respective counties. (1937, c. 175, s. 7.)

§ 106-395. **Compulsory testing.**—Whenever a county board shall co-operate with the State and federal governments, as provided for in §§ 106-388 to 106-399, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle, and no cattle, except for immediate

slaughter, shall be brought into the county unless accompanied by a proper test chart and health certificate issued by a qualified veterinarian, showing that the cattle have passed a proper test for Bang's disease. (1937, c. 175, s. 8.)

§ 106-396. **"Qualified veterinarian" defined.**—The words "qualified veterinarian" shall be construed to mean a veterinarian approved by the State Veterinarian and Chief of the United States Bureau of Animal Industry for the testing of cattle intended for interstate shipment. (1937, c. 175, s. 9.)

§ 106-397. **Authority to promulgate and enforce rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-399 and for the effective control and eradication of Bang's disease. (1937, c. 175, s. 10.)

§ 106-398. **Violation made misdemeanor.**—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-399, or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of §§ 106-388 to 106-399, shall be guilty of a misdemeanor. (1937, c. 175, s. 11.)

§ 106-399. **Punishment for sales of animals known to be infected.**—Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with Bang's disease, except as provided for in §§ 106-388 to 106-399, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars and not more than two hundred dollars, or imprisoned for a term of not less than thirty days or more than two years. (1937, c. 175, s. 12.)

Part 9. Control of Livestock Diseases.

§ 106-400. **Permit from State Veterinarian for sale, transportation, etc., of animals affected with disease.**—No person or persons shall sell, trade, offer for sale or trade, or transport by truck or other conveyance on any public road or other public place within the State any animal or animals affected with a contagious or infectious disease, except upon a written permit of the State Veterinarian and in accordance with the provisions of said permit. The State Veterinarian, or his authorized representative, is hereby empowered to examine any livestock that are being transported or moved, sold, traded, offered for sale or trade on any highway or other public place within the State for the purpose of determining if said animals are affected with a contagious or infectious disease, or are being transported or offered for sale or trade in violation of §§ 106-400 to 106-405. If the animals are found to be diseased or are being moved, sold, offered for sale or trade in violation of §§ 106-400 to 106-405, they shall be placed under quarantine in accordance with the provisions of §§ 106-400 to 106-405 in a place to be determined by the State Veterinarian or his authorized representative. Any animal or animals shipped or otherwise moved into this State in violation of federal laws or regulations shall be handled in accordance with the provisions of §§ 106-400 to 106-405. (1939, c. 360, s. 1.)

Cross Reference.—See § 106-307.4.

§ 106-401. **Notice of quarantine; removal of quarantine.**—The State Veterinarian, or his authorized representative, is hereby authorized to quarantine any animal or animals affected with, exposed to, or injected with any material capable of producing a contagious or infectious disease, and to give public notice of such quarantine by posting or placarding the entrance to or any part of the premises on which the animals are held with a suitable quarantine sign, said animal or animals to be maintained by the owner or person in charge, as pro-

vided for in §§ 106-400 to 106-405, at the owner's expense. No animal or animals under quarantine shall be moved from the premises except upon a written permit from the State Veterinarian or his authorized representative. Said quarantine shall remain in effect until canceled by official notice from the State Veterinarian and shall not be canceled until the sick and dead animals have been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2.)

Cross Reference.—See § 106-307.3.

§ 106-402. Confinement and isolation of diseased animals required.—Any animal or animals affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal or animals in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3.)

§ 106-403. Disposition of dead animals and fowls.—It shall be the duty of the owner or person in charge of any animals or fowls that die from any cause and the owner, lessee, or person in charge of any land upon which any animals or fowls die, to bury the same to a depth of at least three feet beneath the surface of the ground, or to completely burn said animals or fowls, within twenty-four hours after the death of said animals or fowls, or to otherwise dispose of the same in a manner approved by the State Veterinarian. It shall be unlawful for any person to remove the carcasses of dead animals or fowls from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. (1919, c. 36; C. S., s. 4488; 1927, c. 2; 1939, c. 360, s. 4.)

§ 106-404. Animals affected with glanders to be killed.—If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1881, c. 368, s. 8; Code, s. 2489; 1891, c. 65; Rev., s. 3296; C. S., s. 4489.)

Cross Reference.—As to compensation for killing diseased animals, see §§ 106-323 et seq.

§ 106-405. Violation made misdemeanor.—Any person or persons who shall knowingly and willfully violate any provisions of §§ 106-400 to 106-405 shall be guilty of a misdemeanor. (1939, c. 360, s. 6.)

Local Modification.—Macon: 1939, c. 360, s. 7.

ARTICLE 35.

Public Livestock Markets.

§ 106-406. Permits for public livestock markets; restraining order for certain violations.—Any person, firm or corporation operating a public livestock market within the State of North Carolina shall be required to obtain from the Commissioner of Agriculture a permit authorizing the operation of such market. Application for a permit shall be made on forms furnished by the Commissioner of Agriculture and shall show full name and address of all persons having financial interest in the market, name of the officers, manager and person in charge, the name under which the market will operate, location, and facilities for holding and segregating animals, and such other information as the

Commissioner of Agriculture may require. Upon the filing of the application on the forms prescribed and the giving of bond as required in this article, the Commissioner of Agriculture shall issue and deliver to the applicant a permit authorizing the operation of the market, which permit may be revoked by the State Board of Agriculture for violation of the provisions of this article, or the rules and regulations promulgated thereunder, after the owner or operator of the livestock market shall have been given ten days' notice of the alleged violation and an opportunity to be heard relative thereto by the State Board of Agriculture.

If any person, firm, or corporation shall operate a public livestock market in violation of the provisions of this article, or the rules and regulations promulgated by the State Board of Agriculture, or shall fail to comply with the provisions of the article, or rules and regulations promulgated thereunder, a temporary restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, and the judge of the superior court shall have the same power and the authority as in any other injunction proceeding, and the defendant shall have the same rights, including the right of appeal, as in any other injunction proceeding heard before the superior court. (1941, c. 263, s. 1; 1943, c. 724, s. 1.)

Editor's Note. — The 1943 amendment added the second paragraph and rewrote the first.

Cited in State v. Lovelace, 228 N. C. 186, 45 S. E. (2d) 48 (1947).

§ 106-407. Bonds required of operators; exemptions as to permits and health requirements.—The Commissioner of Agriculture shall require the operator of said livestock market to furnish a bond acceptable to the Commissioner of Agriculture of two thousand dollars (\$2,000.00) to secure the performance of all obligations incident to the operation of the livestock market, including prompt payment of proceeds for purchase or sale of livestock: Provided, that said bond shall not be required by a livestock market association organized under a law which requires such association to be bonded or a market operating under the Federal Packers and Stockyards Act. A livestock market where horses and mules are sold exclusively, or a market that sells only finished livestock that are shipped for immediate slaughter, shall be exempt from the health requirements of this article, as set forth in §§ 106-409 and 106-410 and shall not be required to secure a permit as provided for in § 106-406. (1941, c. 263, s. 2.)

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales.—All public livestock markets operating under this article shall have proper facilities for handling livestock, which shall include proper pens for holding and segregating animals, properly protected from weather; an adequate water supply; satisfactory scales if animals are bought, sold, or exchanged by weight, said scales to be approved by the North Carolina Division of Weights and Measures; and such other equipment as the Commissioner of Agriculture may deem necessary for the proper operation of the market. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected at least weekly in accordance with the regulations issued in accordance with this article. Said market shall keep a complete permanent record showing from whom all animals are received and to whom sold, the weight, if purchased or sold by weight, the price paid and the price received, such record to be available to the Commissioner of Agriculture or his authorized representative.

The sales of all livestock at livestock auction markets shall start promptly at 1:00 P. M. on each sales day and the selling of livestock shall be continuous until all livestock is sold. (1941, c. 263, s. 3; 1949, c. 997, s. 1.)

Local Modification. — Robeson: 1951, c. 160.

Editor's Note. — The 1949 amendment added the second paragraph.

§ 106-409. Health certificates for cattle removed for nonslaughter purposes; identification; information form; bill of sale.—No cattle except those for immediate slaughter shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved or provided by the Commissioner of Agriculture, showing that such animals are apparently healthy and come directly from a herd all of which animals in the herd have passed a negative test for Bang's disease within twelve months prior to the date of sale, or that said animal or animals have passed a satisfactory test for Bang's disease made within thirty days prior to sale and such other tests and vaccinations as the Commissioner of Agriculture may require. Every such animal shall be identified by an approved numbered ear tag and description. A copy of said certificate shall be kept on file by the market. No test for Bang's disease shall be required on steers and all cattle less than six months of age, but such animals shall be subject to all other provisions of this article. All cattle removed from any public livestock market for immediate slaughter shall be identified in an approved manner and the person removing same shall sign a form in duplicate showing number of cattle, their description, where same are to be slaughtered or resold for slaughter. Said cattle shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm or corporation that handles cattle for immediate slaughter only, and said cattle shall be used for immediate slaughter only. No market operator shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2.)

Editor's Note. — The 1943 amendment added the last two sentences and rewrote the third sentence from the end of the section. And the 1949 amendment inserted the words "or provided" in the first sentence.

§ 106-410. Health certificate for swine removed for nonslaughter purposes; identification; information form; bill of sale.—No swine, except those for immediate slaughter, shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved or provided by the Commissioner of Agriculture, showing that such animals are apparently healthy and that they have received a proper dose of anti-hog-cholera serum not more than twenty-one days or a proper dose of serum and virus not less than thirty days prior to the date of sale, and such other vaccinations as may be required by the Commissioner of Agriculture. All such swine shall be identified by an approved, numbered ear tag and descriptions which shall be entered on the health certificate. A copy of said certificate shall be kept on file by the market. All swine removed from any public livestock market for immediate slaughter shall be identified by a distinguishing paint mark or by other methods approved by the Commissioner of Agriculture and the person removing same shall sign a form in duplicate showing number of hogs, their description, where same are to be slaughtered or resold for slaughter. Said swine shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm or corporation that handles swine for immediate slaughter only and said swine shall be used for immediate slaughter only. No market operator shall allow the removal of any swine from a market in violation of this section.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, without vaccination and under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4.)

Editor's Note. — The 1943 amendment added the last two sentences and rewrote the third sentence from the end of the section. The 1949 amendment inserted the words "or provided" in the first sentence, and added the second paragraph.

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State.—Any person or persons who shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for slaughter in accordance with this article and the regulations issued in accordance with same. The owner of said animals shall be charged with the responsibility of having said animals slaughtered and shall be liable for all damages resulting from diverting them to other uses or failing to have them slaughtered, in addition to the criminal liability imposed in this article.

Provided this section shall not apply to swine shipped out of this State to holding or feeding lots as provided for in G. S., § 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5.)

Editor's Note.—The 1943 amendment rewrote portions of this section, and the 1949 amendment added the second paragraph.

§ 106-412. Admission of animals to market; quarantine of diseased animals; sale prohibited; regulation of trucks, etc.—No animal known to be affected with a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with or exposed to any contagious or infectious disease of animals or any animal that reacts to a test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon permission of the Commissioner of Agriculture or his authorized representative, and for immediate slaughter only. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said cost shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s. 7.)

§ 106-413. Sale, etc., of certain diseased animals prohibited; application of article; sales by farmers.—No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease or that the owner or person in charge has reason to believe are so affected, except upon permission of the Commissioner of Agriculture or his authorized representatives and for immediate slaughter only. The provisions of this article requiring inspection, testing, vaccination, paint marking, identification with an ear tag and health certificate issued by a qualified veterinarian shall apply to all animals sold or offered for sale on any public highway, right of way, street, or within one-half mile of any public livestock market, or other public place: Provided, that this provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5.)

Editor's Note. — The 1943 amendment rewrote this section.

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health.—No cattle, swine, or other livestock affected with a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative for immediate slaughter only to a designated slaughter point. The burden of proof to establish the health of any animal transported on the public highways of this State, sold, traded, or otherwise disposed of in any public place shall be upon the vendor.

Any person who shall sell, trade, or otherwise dispose of any animal affected with a contagious or infectious disease knowingly, or who has reasons to believe that the animal is so affected, shall be liable for all damages resulting from such sale or trade. (1941, c. 263, s. 9.)

§ 106-415. Fees for permits; term of permits; cost of tests, serums, etc.—The Commissioner of Agriculture is hereby authorized to collect a fee of one hundred dollars (\$100.00) for each permit issued to a public livestock market under the provisions of this article. The fees provided for in this article shall be used exclusively for the enforcement of this article. All permits issued under the provisions of this article shall be effective until the following July first unless canceled for cause. The cost of all tests, serums, vaccine, and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and said cost shall constitute a lien against all of said animals. (1941, c. 263, s. 10; 1949, c. 997, s. 6.)

Editor's Note.—The 1949 amendment increased the fee from \$25.00 to \$100.00.

§ 106-416. Rules and regulations.—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this article. (1941, c. 263, s. 11.)

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this article shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court. A market operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6.)

Editor's Note.—The 1943 amendment inserted at the end of the first sentence the provision as to punishment.

§ 106-418. Exemption from health provisions.—The health provisions of this article shall not apply to no-sale cattle offered for sale by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina. (1941, c. 263, s. 12½.)

ARTICLE 36.

Crop Pests.

§ 106-419. Crop Pest Commission.—The Board of Agriculture shall be the Crop Pest Commission. (1909, c. 90, s. 1; C. S., s. 4896.)

§ 106-420. Powers and duties of Commission; establishing regulations.—The Board of Agriculture shall, from time to time, as it may deem necessary, prepare and publish a list of dangerous crop pests, known to be within the State, or liable to be introduced, and shall also publish methods for exterminating such pests as it may deem capable of being economically exterminated, for repressing such as cannot be economically exterminated, and for preventing their spread within the State. It may also adopt regulations not inconsistent with the laws or Constitutions of this State and of the United States, for preventing the introduction of dangerous crop pests from without the State, and for governing common carriers in transporting plants liable to harbor such pests

to and from the State; which regulations shall have the force of law. Any violation of any such regulations shall be a misdemeanor, and the person violating the same shall upon conviction be fined or imprisoned in the discretion of the court. (1897, c. 264, s. 2; Rev., s. 3980; 1909, c. 90, s. 1; C. S., s. 4897.)

Cross Reference. — See also, § 106-22 paragraph 5.

§ 106-421. Crop pests declared nuisance; method of abatement.—No person shall knowingly and willfully keep upon his premises any plant infested by any dangerous crop pest, listed and published as such by the Board of Agriculture, or permit dangerous weed pests to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Board of Agriculture, take such measures as may be prescribed to eradicate such pests. If such action is not taken, or is improperly executed within ten days after such notification, the Board of Agriculture shall cause such premises to be freed from such pests by the best available method. The cost of such work shall be a lien upon the premises, and may be recovered, together with cost of action, before any court having jurisdiction. The notice shall be written and mailed to the usual or known address, or left at the ordinary place of business of the owner or his agent. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infested plant or crop, when done by the order of the Board of Agriculture. (1897, c. 264, s. 3; Rev., s. 3981; 1909, c. 90, s. 1; C. S., s. 4898.)

§ 106-422. Right to enter and inspect premises.—Whenever the Board of Agriculture has reason to suspect that any pest, listed as dangerous, exists in any portion of the State, it shall cause an investigation to be made by some person capable of determining the specific identity of such pest, and, if it be found to exist, the Board of Agriculture shall further appoint a competent person as its agent to inspect such infested premises, and to take such measures for treating the same as the Board may direct. Any duly authorized agent of the Board of Agriculture shall have authority to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year. (1897, c. 264, s. 4; Rev., s. 3982; 1909, c. 90, s. 1; C. S., s. 4899.)

§ 106-423. Preventing inspection or hindering execution of article a misdemeanor.—If any one shall seek to prevent inspection of his premises as provided in § 106-422, or shall otherwise interfere with any agent of the Commission, or Board of Agriculture while in performance of his duties under § 106-422, he shall, upon conviction, be fined not less than five nor more than fifty dollars for each offense, or may be imprisoned for not less than ten nor more than thirty days. (Rev., s. 3713; 1907, c. 876; C. S., s. 4900.)

ARTICLE 37.

Cotton Grading.

§ 106-424. Federal standards recognized.—The standards or grades of cotton established or which may be hereafter established by the Secretary of Agriculture by virtue of Acts of Congress shall be recognized as the standards in transactions by and between citizens of this State in transactions relating to cotton. (1915, c. 23, s. 1; C. S., s. 4901.)

§ 106-425. Duplicates of federal samples may be used.—The Commissioner of Agriculture shall obtain from the Secretary of Agriculture a duplicate of each of these samples as represent cotton produced in this State for the

use of the citizens of the State who may desire to use them in settlement of any disputed transaction. (1915, c. 23, s. 2; C. S., s. 4902.)

§ 106-426. Expert graders to be employed; co-operation with United States Department of Agriculture.—The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as they may adopt. The above institutions may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S., s. 4903.)

§ 106-427. County commissioners to co-operate.—Any board of commissioners of any county in North Carolina is authorized and empowered to co-operate with either, or both, of the above-named institutions in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904.)

§ 106-428. Grading done at owner's request; grades as evidence.—The expert graders employed by either of the above-named institutions, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any Act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905.)

§ 106-429. Grader's certificate admissible as evidence.—In the event of any dispute or trial pending in any of the courts of this State, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the State, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert. (1915, c. 175, s. 4; C. S., s. 4906.)

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-430. Purpose of law.—In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for cotton and other agricultural commodities, in order to enable growers of cotton and other agricultural commodities more successfully to withstand and remedy periods of depressed prices, in order to provide a modern system whereby cotton and other agricultural commodities may be more profitably and more scientifically marketed, and in order to give these products the standing to which they are justly entitled as collateral in the commercial world, a warehouse system for cotton and other agricultural products in the State of North Carolina is hereby established as hereinafter provided. (1919, c. 168, s. 1; 1921, c. 137, s. 1; C. S., s. 4925(a); 1941, c. 337, s. 1.)

Editor's Note.—Prior to the 1941 amendment this section applied only to cotton.

The 1941 act, amending several sections of this article and inserting § 106-431, provides that its provisions shall not apply to the storage of tobacco in any form.

For a full discussion of the purpose and

application of the former statutes, see *Bickett v. Tax Commission*, 177 N. C. 433, 99 S. E. 415 (1919).

Proper Parties in Action to Enforce Section.—The Governor, the State Board of Agriculture, and the State Warehouse Superintendent are proper parties plain-

tiff in an action against the members of the State Tax Commission to require them to provide and enforce the machinery for

the collection of the tax provided by this article. *Bickett v. Tax Commission*, 177 N. C. 433, 99 S. E. 415 (1919).

§ 106-431. Definition of "other agricultural commodities."—The term "other agricultural commodities" as used in this article shall mean such agricultural commodities other than cotton as shall be designated by the Board of Agriculture, through rules and regulations adopted pursuant to this article, as suitable to be stored in the warehouses operating under this article. (1941, c. 337, s. 1½.)

Cited in *Lacy v. Indemnity Co.*, 193 N. C. 179, 136 S. E. 359 (1927); *Champion Shoe Machinery Co. v. Sellers*, 197 N. C. 30, 147 S. E. 674 (1929).

§ 106-432. Board of Agriculture administers law, makes rules, appoints superintendent.—The provisions of this article shall be administered by the State Board of Agriculture, through a suitable person to be selected by said Board, and known as the State warehouse superintendent. In administering the provisions of this article the Board of Agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this article, and to fix and prescribe reasonable charges for storing cotton and other agricultural commodities in the local warehouses and publish the same from time to time as it may deem necessary. (1919, c. 168, s. 2; 1921, c. 137, s. 2; C. S., s. 4925(b); 1941, c. 337, s. 2.)

Editor's Note.—Prior to the 1941 amendment this section applied only to cotton.

§ 106-433. Employment of officers and assistants.—The Board of Agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties. (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S., s. 4925(c).)

§ 106-434. Bonds of superintendent and employees.—The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars (\$50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The superintendent shall, to safeguard the interests of the State, require bonds from other employees authorized in § 106-433 in amounts as large at least as he may find ordinary business experience in such matters would suggest as ample. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S., s. 4925(d).)

Liability for Loss as Affected by Negligence.—The larceny or loss of the cotton from a warehouse through no fault of the warehouseman does not relieve his bond of liability for a warehouseman is an insurer. *Lacy v. Hartford Acci., etc., Co.*, 193 N. C. 179, 136 S. E. 359 (1927).

Fraudulent Negotiation of Warehouse Receipt.—Where the superintendent of a

warehouse delivers cotton, takes the endorsed receipts and instead of cancelling them negotiates a loan for his own benefit pledging the receipts as collateral, this is a clear breach of his duty for which an action on his bond will lie. *Lacy v. Globe Indemnity Co.*, 189 N. C. 24, 126 S. E. 316 (1925).

§ 106-435. Fund for support of system; collection and investment.—In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: That on each bale of cotton ginned in North Carolina during the period from the ratification

of this bill until June thirty, one thousand nine hundred and twenty-two, twenty-five (25) cents shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgages to aid and encourage the establishment of warehouses operating under this system, such investments to be made by the Board of Agriculture with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than ten years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of §§ 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S., s. 4925(e).)

Constitutionality of Taxation under Section.—The tax, contemplated under this section, being uniform upon those of the class designated, and being laid upon a trade, whether that of cotton ginning or farming, is within the authority conferred on the legislature to further "tax trades," etc., and is constitutional. *Bickett v. Tax Commissions*, 177 N. C. 433, 99 S. E. 415 (1919).

Loss Due to Failure to Issue Receipt Not Recoverable from State Treasurer.—A recovery may not be had against the State Treasurer out of the fund accumulated under this section, for a loss resulting to plaintiff by failure of a warehouse to issue official receipts for cotton to plaintiff as agreed, the receipts having been issued to the holder of a lien against the cotton

and the warehouse having refused delivery of the cotton to plaintiff upon his demand, since the purpose of the act is to make warehouse receipts acceptable as collateral, and plaintiff is not the holder of the receipts. *Northcutt v. People's Bonded Warehouse Co.*, 206 N. C. 842, 175 S. E. 165 (1934).

Recovery on Bond. — Where a warehouse superintendent fraudulently negotiates spent warehouse receipts and the bona fide holder thereof recovers from the indemnifying fund provided by this section, the State may recover on the bond of the superintendent. The bond is the fund primarily liable. *Lacy v. Globe Indemnity Co.*, 189 N. C. 24, 126 S. E. 316 (1925).

Cited in *Harris v. Fairley*, 232 N. C. 551, 61 S. E. (2d) 616 (1950).

§ 106-436. Registration of gins; gin records and reports; payment of tax.—If the special levy authorized by § 106-446 is made, it shall be the duty of the Commissioner of Agriculture to require the registration of all gins operating within the State, and to furnish the certificates of registration, numbered serially, free upon application; and each person, firm, partnership, or corporation receiving the said certificate of registration shall post it conspicuously in the gin to which it applies. For failure to make application and secure such certificate of registration, and to post same as required in this section, before beginning operation, each person, firm, partnership, or corporation shall be subject to a penalty of five dollars (\$5) for each and every day such gin shall be operated prior to securing and posting such certificate of registration. The penalty herein provided for shall be recovered by the State in a civil action to be brought by the State Commissioner of Agriculture in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. Each person, firm, partnership, or corporation operating

a gin shall keep a record, on forms furnished or approved by the Commissioner of Agriculture, showing the names and addresses of the owners of the cotton ginned, the number of bales ginned, and the date of each ginning; and each such operator of a gin shall report the number of bales ginned, and pay the tax levied in § 106-435 to the State at least once every thirty days after beginning operation, and shall send a true copy of the report to the Commissioner of Agriculture. (1921, c. 137, s. 6; C. S., s. 4925(f).)

§ 106-437. **Qualifications of warehouse manager.**—No man shall be employed as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the State warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S., s. 4925(g).)

§ 106-438. **Warehouse superintendent to accept federal standards.**—The State warehouse superintendent shall accept as authority the standards and classifications of cotton established by the federal government. (1919, c. 168, s. 9; 1921, c. 137, s. 8; C. S., s. 4925(h).)

§ 106-439. **Duties of superintendent; manner of operating warehouse system.**—The State warehouse superintendent shall have the power to lease for stated terms property for the warehousing of cotton and other agricultural commodities: Provided, no rent shall be paid until the operating expenses of each such warehouse so leased shall have been paid from the income of the warehouse so leased, and in no case shall the State be responsible for any rent except from the income of such warehouse so leased in excess of operating expenses; and said superintendent shall fix the terms upon which private or corporate warehouses may obtain the benefits of State supervision and operation. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the State for operation under the terms of this article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the State Board of Agriculture. The violation of such rules by any officer of the system shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from such State management; and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to § 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; C. S., s. 4925(i); 1941, c. 337, s. 3.)

Editor's Note.—The 1941 amendment re-wrote this section.

Cited in *Harris v. Fairley*, 232 N. C. 551, 61 S. E. (2d) 616 (1950).

§ 106-440. **Power of superintendent to sue or to be sued; liability for tort.**—The said superintendent shall also have the power to sue, or to be sued, in the courts of this State in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the county of Wake or in the county in which the cause of action arose. (1919, c. 168, s. 11; 1921, c. 137, s. 10; C. S., s. 4925(j).)

§ 106-441. **Grading and weighing of products; negotiable receipts; authentication of receipts.**—When agricultural commodities other than cotton have been stored in warehouses operated under this article and have been graded and standardized in conformity with the grades and standards heretofore or hereafter promulgated by the Board of Agriculture, acting under the pro-

visions of §§ 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the Board of Agriculture may be issued. As soon as possible after any lint cotton, properly baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or State classifier and legally weighed. Official negotiable receipts of the form and design approved by the Board of Agriculture shall be issued for such cotton under the seal and in the name of the State of North Carolina, stating the location of the warehouse, the name of the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or by the State warehouse superintendent or his duly authorized agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the State warehouse system for fluctuations in weight due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in § 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; C. S., s. 4925(k); 1925, c. 225; 1941, c. 337, s. 4.)

Editor's Note. — The 1941 amendment rewrote this section.

C. S., § 4918, superseded by this section, specifically stated that official receipts would carry "absolute title to the cotton." It may thus be doubted whether official receipts could be issued in the name of the owner, when the cotton was encumbered by a lien. *Northcutt v. People's Bonded Warehouse Co.*, 206 N. C. 842, 175 S. E. 165 (1934).

Warehouseman as Insurer. — Where under a contract of bailment the bailee receives certain bales of cotton and stores them in his warehouse, under agreement to return the identical bales upon return of the warehouse receipts in the manner provided in the contract, the liability of the bailee is that of insurer, and it is liable in damages when it is prevented by theft from performing its contract, though without negligence on its part. *Lacy v. Hart-*

ford Acci., etc., Co., 193 N. C. 179, 136 S. E. 359 (1927), decided under the former law.

Same—Liability to State. — Under the provisions of the statute to provide improved marketing facilities for cotton, and the rules and regulations made by the State Board of Agriculture under section 106-432, and the warehouse receipts, made negotiable by this section, the warehouseman's liability to the State after it has paid the bailor for his stolen cotton, or the one entitled by the proper transfer of the certificate, is not dependent upon the exercise of due care by the warehouseman, or the absence of negligence by its employees or agents, for within the intent and meaning of the statute the liability of the warehouseman is that of insurer. *Lacy v. Hartford Acci., etc., Co.*, 193 N. C. 179, 136 S. E. 359 (1927), decided under the former law.

§ 106-442. **Transfer of receipt; issuance and effect of receipt.**—The official negotiable receipt issued under § 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, it being the duty of the local manager accepting same for storage to satisfy himself as to

the title to the same by requiring the depositor of the cotton or other agricultural commodity to sign a statement appearing on the face of the official receipt to the effect that there is no lien, mortgage, or other valid claim outstanding against such cotton or other agricultural commodity, and any person falsely signing such a statement shall be punished as provided for false pretenses in § 14-100. (1921, c. 137, s. 12; C. S., s. 4925(1); 1941, c. 337, s. 5.)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodity."

When Negotiation a Breach of Duty.— Official warehouse receipts are negotiable by written assignment and delivery, and negotiation of a receipt is not impaired by

the fact that such negotiation was a breach of duty on the part of the person making the negotiation if the person to whom the receipt was negotiated took same for value, in good faith, and without notice of the breach of duty. *Harris v. Fairley*, 232 N. C. 551, 61 S. E. (2d) 616 (1950).

§ 106-443. Issuance of false receipt a felony; punishment.—The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the State penitentiary for a period of not less than one or more than five years, or by a fine not exceeding ten times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; C. S., s. 4925(m); 1941, c. 337, s. 6.)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodity."

§ 106-444. Delivery of cotton without receipt or failure to cancel receipt.—Any manager, employee, agent, or servant who shall deliver cotton or other agricultural commodity from a warehouse under this article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton or other agricultural commodity, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or imprisonment not more than five years, or both fine and imprisonment, in the discretion of the court. (1919, c. 168, s. 14; 1921, c. 137, s. 14; C. S., s. 4925(n); 1941, c. 337, s. 7.)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodity."

§ 106-445. Rules for issuance of duplicate receipts.—The State warehouse superintendent, or his duly authorized agent, and the manager of the local warehouse are authorized to issue a duplicate receipt for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the State warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the State warehouse superintendent and the local manager from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the Board of Agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; C. S., s. 4925(o); 1941, c. 337, s. 8.)

Editor's Note.—The 1941 amendment inserted the words "or other agricultural commodity" and made other changes.

§ 106-446. State not liable on warehouse debts; tax on cotton continued if losses sustained.—No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision may be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required of all officers and supplemental indemnifying or guarantee fund mentioned in § 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose especial financial benefit it is established, it is hereby provided that in the eventuality that the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, such losses shall be made good by having the State Board of Assessment repeat for another twelve months selected by it the special levy on ginned cotton, as prescribed in § 106-435, for the two years ending June thirtieth of the year one thousand nine hundred and twenty-three. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9.)

Editor's Note.—The 1941 amendment inserted the words "or other agricultural commodities" in the first sentence of this section.

§ 106-447. Insurance of cotton; premiums; lien for insurance and storage charges.—The superintendent shall insure, or shall require the local manager to insure and keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton and other agricultural commodities on storage against loss by fire and lightning. In case of loss, the superintendent shall collect the insurance due and pay the same, ratably, to those lawfully entitled to it, insurance policies to be in the name of the State and the premium collected from the owners of the cotton and other agricultural commodities, the State to have a lien on cotton and other agricultural commodities for insurance and storage charges as in the case of other public warehouses in the State. (1919, c. 168, s. 17; 1921, c. 137, s. 17; C. S., s. 4925(q); 1941, c. 337, s. 10; 1943, c. 474.)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodities." The 1943 amendment added at the end of the first sentence the words "against loss by fire and lightning."

§ 106-448. Superintendent to negotiate loans on receipts and sell cotton for owners.—The State warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner or owners of the warehouse receipts and cotton or other agricultural commodities stored in such warehouses to aid, assist, and co-operate, or as the duly authorized agent of such owner or owners (which authorization shall be in writing), to secure and negotiate loans upon the warehouse receipts. And upon like written request or authorization of said owner or owners, and his or their duly authorized agent, he may sell and dispose of such warehoused cotton or other agricultural commodities for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said superintendent, in writing. And for said loan or sales the said superintendent shall charge reasonable and just commissions, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance and operation of the State warehouse system: Provided however, that the State incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided, further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by rea-

son of which the owner or owners of such warehoused cotton or other agricultural commodities suffers damage or loss. (1919, c. 168, s. 18; 1921, c. 137, s. 18; C. S., s. 4925(r); 1941, c. 337, s. 11.)

Editor's Note. — The 1941 amendment made this section applicable to "other agricultural commodities."

§ 106-449. Construction of the 1941 amendment.—The provisions of chapter 337 of the Public Laws of 1941, amending this article, shall not apply to the storage of tobacco in any form. (1941, c. 337, s. 11½.)

§ 106-450. Compliance with United States warehouse law.—The State warehouse superintendent may, upon approval of the Board of Agriculture, operate or cause to be operated, subject to the United States Warehouse Act, any or all of the warehouses leased by him under the provisions of this article, and he is authorized to comply with said United States Warehouse Act and the regulations thereunder. (1921, c. 137, s. 19; C. S., s. 4925(s).)

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined.—Any person, firm or corporation operating any public cotton gin: that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways: (1) Attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number; (2) impress the serial number upon one of the bands or ties around the bale. Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days.

Any person, firm or corporation buying a bale of cotton on which this number has: (1) Been removed; (2) defaced by cutting; (3) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not more than thirty (30) days.

Every public ginnery, as defined in the first paragraph of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by the first paragraph of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number prescribed in the first paragraph of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof. (1923, c. 167; 1949, c. 824.)

Editor's Note. — The 1949 amendment deleted "(1) mark in color upon the bagging of the bale, in figures", formerly appearing in the first paragraph, and renu-

bered former (2) and (3) to be (1) and (2), respectively. It also added the second and third paragraphs.

§ 106-451.1. Purchasers of cotton to keep records of purchases.—Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the seller of the cotton, the date on which purchased, the weight or amount and the serial number

of the bales provided for by § 106-451. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this State shall be required to keep only so much of the records hereinabove specified as purchasers are required to keep by the law of the state where said cotton was ginned. (1945, c. 61; 1947, c. 977.)

Editor's Note. — The 1947 amendment added the proviso.

ARTICLE 39.

Leaf Tobacco Warehouses.

§ 106-452. Maximum warehouse charges.—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum: Provided, that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed four per centum. (1895, c. 81; Rev., s. 3042; C. S., s. 5124; 1941, c. 291.)

Editor's Note. — The 1941 amendment (1929).

A warehouse system to aid in the marketing of leaf tobacco is authorized by this section et seq. *Champion Shoe Machinery Co. v. Sellers*, 197 N. C. 30, 147 S. E. 674

Cited in *Townsend v. Yeomans*, 301 U. S. 441, 57 S. Ct. 842, 81 L. Ed. 1265 (1937); *Davies Warehouse Co. v. Bowles*, 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635 (1944).

§ 106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C. S., s. 5125; 1951, c. 1105, s. 1.)

Cross Reference.—As to provisions requiring accounts of sales and reports to commissioner, see §§ 106-456 et. seq.

Editor's Note. — The 1951 amendment added the second paragraph.

§ 106-454. Warehouse proprietor to render bill of charges; penalty.—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by anyone injured thereby. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C. S., s. 5126.)

§ 106-455. Tobacco purchases to be paid for by cash or check to order.—The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

Editor's Note.—The 1939 amendment of section prior to amendment, see 9 N. C. added the second sentence. For discussion Law Rev. 387.

ARTICLE 40.

Leaf Tobacco Sales.

§ 106-456. Accounts of warehouse sales required.—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S., s. 4926.)

Cross Reference.—As to effective period of lien upon leaf tobacco sold in auction warehouse, see § 44-69.

§ 106-457. Monthly reports to Commissioner; results classified.—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the Commissioner of Agriculture at Raleigh, North Carolina. The report so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (1907, c. 97, s. 2; C. S., s. 4927; Ex. Sess. 1921, c. 76.)

§ 106-458. Commissioner to keep record and publish in bulletin.—The Commissioner of Agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (1907, c. 97, s. 3; C. S., s. 4928; Ex. Sess. 1921, c. 76.)

§ 106-459. Penalty for failure to report sales.—Any warehouse failing to make the report as required by § 106-457 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the Department of Agriculture for expense of advertising. (1915, c. 31, s. 1; C. S., s. 4929.)

§ 106-460. Commissioner to publish names of warehouses failing to report sales; certificate as evidence.—The Commissioner shall, on the 14th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the Commissioner under seal of the Department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; C. S., s. 4930; Ex. Sess. 1921, c. 76.)

§ 106-461. Nested, shingled or overhung tobacco.—It shall be unlawful for any person, firm or corporation to sell or offer for sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

1st. Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;

2nd. Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and

3rd. Overhanging tobacco: That is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

§ 106-462. Sale under name other than that of true owner prohibited.—It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 106-463. Allowance for weight of baskets and trucks.—It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

§ 106-464. Violation made misdemeanor.—Any person, firm or corporation violating the provisions of §§ 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1933, c. 467, s. 4.)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.—Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to-wit:

A membership fee of fifty dollars (\$50.00) in those towns in which less than three million pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars (\$100.00) in those towns in which during said period of time more than three million and less than ten million pounds

of tobacco was sold; a fee of one hundred fifty dollars (\$150.00) in those towns in which during said period of time more than ten million and less than twenty-five million pounds of tobacco was sold; a fee of three hundred dollars (\$300.00) in those towns in which during said period of time more than twenty-five million pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

A. Warehousemen;

B. Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (1) Participating or (2) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383.)

Editor's Note.—The 1951 amendment inserted the matter between the fifth paragraph and the next to the last paragraph.

ARTICLE 41.

Dealers in Scrap Tobacco.

§ 106-466. Application for license; amount of tax; exceptions.—

Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the State of North Carolina shall first procure from the Commissioner of Revenue of North Carolina a license so to do, and for that purpose shall file with the said Commissioner of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situated; and shall pay to the said Commissioner of Revenue of North Carolina, to be placed in the general fund for the use of the State, an annual license tax of five hundred dollars (\$500.00) for each and every county in North Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of leaves of tobacco

are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this article: Provided, that the tax herein levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant. (1935, c. 360, s. 1; 1937, c. 414, s. 1; 1939, c. 389, s. 1; 1941, c. 246.)

Editor's Note. — The 1939 amendment decreased the license tax from \$1000 to \$250. The 1941 amendment increased the tax to \$500 and added the proviso.

Validity. — This article, imposing a license tax on dealers in scrap tobacco, is not vague or uncertain, and is uniform and equal in its application. *Ficklen Tobacco Co. v. Maxwell*, 214 N. C. 367, 199 S. E. 404 (1938), holding that the former tax

of \$1,000 was not excessive as a matter of law.

The former law (P. L. 1935, c. 360) was void for uncertainty, the statute failing to stipulate the time when the license prescribed should be paid and failing to prescribe for how long a time the license should run. *State v. Morrison*, 210 N. C. 117, 185 S. E. 674 (1936).

§ 106-467. Report to Commissioner of Agriculture each month.— On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in § 106-466 shall make a report to the Commissioner of Agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ 106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc.—(a) If any person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the Commissioner of Revenue as herein provided shall be displayed in a conspicuous place in said warehouse, office or place of business. Such license so obtained shall not be transferable and shall authorize such person, firm or corporation to engage in the business described in this article only on the premises described in the license. Only one original license shall be issued to any person, firm or corporation, which will authorize such person, firm or corporation to engage in such business in the county for which such license is issued. If such person, firm or corporation shall have no warehouse, office, or fixed place of business in the county where such business is carried on, if the original license is to be issued to a firm, partnership or copartnership, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such firm, partnership or copartnership. If such license is to be issued to a corporation, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such corporation and the license so issued will authorize only the individual designated thereon to engage in such business for or on behalf of such person, firm, partnership, copartnership or corporation, and none other. If such person, firm or corporation carries on the business herein described through agents, representatives, solicitors, or peddlers other than those named on the original license issued, as herein provided, additional and like licenses, for which there shall be paid the sum of two hundred fifty dollars, (\$250.00), shall be obtained for such additional agents, representatives, solicitors, or peddlers for each county in which such business is carried on, in the manner hereinafter set out, and all original and additional licenses issued to persons, firms or corporations which have no warehouse, office or fixed place of business shall be carried on the person of such licensee and shall be exhibited when requested or demanded by any law enforcement officer of North Carolina, or any person from whom such tobacco is bought, or to whom the same may be sold.

Any person, firm or corporation applying for and obtaining a license under this article may employ traveling representatives, agents, peddlers, or solicitors for the purpose of buying and/or selling scrap tobacco, but such traveling representatives, agents or peddlers shall apply for and obtain from the Commissioner of Revenue a separate additional license on behalf of such person, firm or corporation whom or which he represents and shall pay for such license a tax of two hundred fifty dollars (\$250.00) for each additional license so issued. Every such additional license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Such traveling representative, agent or peddler engaged in such business shall carry on his person the license so obtained, which shall be exhibited when requested or demanded by any law enforcement officer of North Carolina or any person from whom such tobacco is bought or to whom the same may be sold.

(b) Any such person, firm or corporation described in subsection (a) of this section, who is engaged in the business of buying and/or selling scrap tobacco within the meaning of this article, and who maintains and operates in connection therewith a plant or factory where such scrap tobacco is processed, manufactured, or redried, shall apply for and obtain from the Commissioner of Revenue a license to engage in such business and for that purpose shall file with the Commissioner of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in such business, and the place or places where his, their, or its principal office is situated, and shall pay for such license a tax of five hundred dollars (\$500.00) for each county in this State in which the applicant proposes to engage in such business. The license so issued shall authorize the person, firm or corporation to whom it is issued to engage in such business only on the premises designated in the license. Persons, firms or corporations taxed under this subsection shall not be required to pay the license tax provided for in subsection (a) of this section. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue and no license shall be issued for less than the full amount of the tax prescribed. (1935, c. 360, s. 3; 1937, c. 414, s. 3; 1939, c. 389, s. 2.)

Editor's Note.—The 1939 amendment rewrote this section.

§ 106-469. Violation made misdemeanor.—Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ 106-470. Exemptions.—Nothing in this article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year one thousand nine hundred thirty-seven, or to purchases or sales of scrap or untied tobacco which has been processed, redried or manufactured. (1937, c. 414, s. 4½; 1939, c. 389, s. 3.)

Editor's Note. — The 1939 amendment added the part of this section beginning with the words "or to purchases".

ARTICLE 42.

Production, Sale, Marketing and Distribution of Tobacco.

§ 106-471. Definitions.—As used in this article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

"Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of the State or federal government.

"Similar act" means an act of another state containing provisions substantially

the same as this article, except that the omission of provisions requiring the establishment of acreage quotas for individual farms shall not be deemed a substantial variation from this article.

"Kind of tobacco" means one or more types of tobacco as classified in the service and regulatory announcement number one hundred and eighteen of the bureau of agricultural economics of the United States Department of Agriculture as listed below, according to the name or names by which known:

Types eleven, twelve, thirteen and fourteen, known as flue-cured tobacco.

Type thirty-one, known as burley tobacco.

"Crop year" means the period from May first of one year to April thirtieth of the succeeding year, both dates inclusive.

"Surplus tobacco" means the quantity of tobacco marketed from the crop produced on a farm in any crop year in excess of the marketing quota for such farm for such year.

"Buyer or handler" means any person who buys tobacco from the producer thereof, or who sells tobacco for the producer thereof, and pays the producer for such tobacco, or who redries or otherwise processes tobacco for the producer thereof prior to the sale of such tobacco by the producer, or any producer who markets tobacco produced by him directly to the consumer.

"Dealer" means any person who buys and resells tobacco prior to the redrying, conditioning, or processing thereof.

"Producer" means any person who has the right during any year to sell, or to receive a share of the proceeds derived from the sale of, tobacco produced by him or on land owned or leased by him.

"Operator" means any person who, as owner-operator, or as cash rent, standing rent, or share rent tenant, operates a farm (i. e., a tract or tracts of land operated as a unit with the same machinery and other equipment) on which tobacco is produced, and includes a share cropper who operates a farm if the owner-operator or tenant does not provide for the obtaining of marketing certificates with respect to the tobacco crop of the farm. (1937, c. 22, s. 1.)

Editor's Note.—This article, known as the Tobacco Compact Act, depended upon similar action in other tobacco-producing states, which failed to materialize, and con-

sequently is of no avail until other tobacco-producing states co-operate. 15 N. C. Law Rev. 323.

§ 106-472. North Carolina Tobacco Commission created; members; county and district committeemen; vacancies; compensation.—There is hereby created a commission to be known as the North Carolina Tobacco Commission (hereinafter referred to as the "Commission"). The Commission shall consist of seven (7) members, and each of the four (4) tobacco belts, viz.: eastern belt, middle belt, old belt and border belt, shall have one or more representatives selected as follows: When this article becomes effective, the Director of the State Agricultural Extension Service shall arrange for a meeting of tobacco producers in each county (any county in which there are less than one hundred tobacco producers shall be grouped with another adjoining county), at which three (3) tobacco producers shall be elected, by the producers attending the meeting, to serve as county committeemen for one crop year. The Director of the State Agricultural Extension Service shall divide the State into six (6) districts and arrange for a meeting of the county committeemen elected in each district, at which meeting the county committeemen in each district shall nominate from among their number three (3) producers to serve as district committeemen. From the three (3) district committeemen nominated in each district the Governor shall appoint one producer to serve for a period of one crop year as a member of the Commission. The Director of the State Agricultural Extension Service shall serve, or shall appoint one member of his staff to serve, as a member of the Commission. Vacancies on the Commission during any crop year shall be filled by the Governor by the appointment of another district committeeman for the remainder of such year from the

district in which the vacancy occurs: Provided, that the Director of the State Agricultural Extension Service shall fill the vacancy in the case of the member of the Commission appointed by him. At the end of each crop year the Tobacco Commission shall be selected for the succeeding crop year in the manner provided above. Each member of the Commission not already in the employment of the State shall be paid the sum of ten dollars (\$10.00) for each day actually spent in the performance of his duties, and shall be reimbursed for subsistence, not exceeding five dollars (\$5.00) per day, and for necessary travel expenses. (1937, c. 22, s. 2.)

§ 106-473. Compacts with governors of other states; referendum on question of enforcement.—The Governor is authorized and directed to negotiate and enter into a compact with respect to each kind of tobacco with the governor of each of the states producing such kind of tobacco: Provided, (1) that any compact shall not become effective until it has been entered into by the States of North Carolina, Virginia, South Carolina and Georgia, and any compact with respect to burley tobacco shall not become effective until it has been entered into by the States of North Carolina, Kentucky, Virginia and Tennessee; (2) that a compact with respect to any kind of tobacco shall not become effective during any crop year unless entered into prior to the first day of such crop year, and (3) that any provisions in such compact or compacts which relate to the establishment of tobacco acreage quotas as provided herein shall not become effective unless and until the consent of the Congress of the United States shall be given to a compact or compacts providing for the establishment of tobacco acreage quotas. This article shall be enforced with respect to any kind of tobacco upon the establishment of a compact with respect to such kind of tobacco, and its enforcement with respect to such kind of tobacco shall be suspended upon the withdrawal from such compact by any state required as a party thereto. If an injunction issued by a court of competent jurisdiction against the enforcement of a similar act of any state is made permanent so as to stop the administration of said act in such state during any crop year, the enforcement of this article may be suspended by the Commission with respect to the kind of tobacco covered by such compact until such time as the compact is again made effective or the injunction dissolved, as the case may be. Upon the filing with the Commission of a petition or petitions by fifteen per cent or more of the producers of any kind of tobacco in this State requesting that the enforcement of this article be suspended with respect to such kind of tobacco, the Commission shall conduct a referendum within sixty days after the receipt of such petition or petitions to determine whether the producers of such kind of tobacco in the State are in favor of the enforcement of this article, and if the Commission finds that one-third or more of the producers who vote in the referendum are not in favor of the enforcement of the article, such findings of the Commission shall be certified to the Governor, who shall proclaim the article inoperative for the crop year next succeeding the crop year in which the referendum is conducted. (1937, c. 22, s. 3.)

§ 106-474. Co-operation with other states and Secretary of Agriculture in making determinations.—The Commission shall meet and co-operate with the tobacco commissions of other states that are parties to a compact, and any persons designated by the Secretary of Agriculture of the United States to serve in an advisory capacity, for the purposes of making certain determinations enumerated in this section, and when such determinations are agreed upon by a majority of the members of the Commission for this State, and a majority of the members of the commissions for other states, such determinations shall be accepted and followed in the administration of this article.

(a) Determine from statistics of the United States Department of Agriculture a marketing quota, which for any kind of tobacco shall be that quantity of such kind of tobacco produced in the United States which is estimated to be required for world consumption during any crop year, increased or decreased, as the case

may be, by the amount by which the world stocks of such kind of tobacco at the beginning of such crop year are less than or greater than the normal world stocks of such kind of tobacco.

(b) Determine a tobacco marketing quota for each state, for each kind of tobacco, for each crop year for which this article is in effect with respect to such kind of tobacco. The marketing quota for each state for each kind of tobacco shall be that percentage of the quantity determined under subsection (a) of this section which is equal to the percentage that the total production of such kind of tobacco in the state for the year or years set forth below is the total production of such kind of tobacco in the United States for such year or years:

Flue-cured tobacco, one thousand nine hundred and thirty-five, and burley tobacco, one thousand nine hundred and thirty-three, one thousand nine hundred and thirty-four, and one thousand nine hundred and thirty-five.

(c) Determine a base tobacco yield for each state for each kind of tobacco. The base tobacco yield for each kind of tobacco for each state shall be the total production of such kind of tobacco in such state in the year or years named in subsection (b) of this section, divided by the total harvested acreage of such kind of tobacco in such state in such year or years.

(d) Determine and make such adjustments from year to year in the percentage of the marketing quota to be assigned to each state, or in the base yield for each state, or both (as determined pursuant to subsections (b) and (c) of this section and as adjusted in any preceding year pursuant to this subsection), not exceeding two per cent (2%) decrease or five per cent (5%) increase in any crop year of the percentage of the said marketing quota assigned to each state, or five per cent (5%) decrease or increase of the base yield for each state in any crop year, as are determined to be necessary to correct for any abnormal conditions of production during the year or years specified in subsection (b) of this section, and trends in production during or since such year or years in any state as compared with other states: Provided, that the percentages of the marketing quota for any kind of tobacco for all states producing such kind of tobacco, as adjusted pursuant to this subsection, for any year shall equal one hundred per cent (100%).

(e) Determine and make adjustments in the marketing quota established pursuant to subsections (b) and (d) of this section for any kind of tobacco for any crop year, not exceeding ten per cent (10%) of said quota, from time to time during that period from August first to December fifteenth of such year if, upon the study of supply and demand conditions for such kind of tobacco, the Commission finds that such adjustments are required to effectuate the purpose of this article and of similar acts of other states: Provided, that any such adjustment shall apply uniformly to all states and only during the crop year in which such adjustment is made.

(f) Determine regulations with respect to the transfer of marketing certificates among producers of any kind of tobacco within the states which are parties to a compact with respect to such kind of tobacco, and such other regulations as may be deemed appropriate to the uniform administration and enforcement of this article and of similar acts of other states. (1937, c. 22, s. 4.)

§ 106-475. Tobacco acreage and marketing quotas for each farm.—The Commission shall establish tobacco acreage and tobacco marketing quotas for each crop year for any farm on which tobacco is grown, such quotas to be determined as follows:

(a) For any farm for which a base tobacco acreage and a base tobacco production have previously been determined by the Agricultural Adjustment Administration of the United States Department of Agriculture, as shown by the available records and statistics of that Department, the base tobacco acreage and base tobacco production so last determined shall constitute the tobacco acreage and tobacco marketing quotas, subject to such adjustments as are recommended by the county committee of the county in which the farm is located and approved by the

Commission as being in conformity with the provisions of subsections (c) and (d) of this section.

(b) For any farm for which a base tobacco acreage and base tobacco production have not been previously determined by the Agricultural Adjustment Administration of the United States Department of Agriculture, the tobacco acreage and tobacco marketing quotas shall be established in conformity with the provisions of subsections (c) and (d) of this section: Provided, that the total of the tobacco acreage and of the tobacco marketing quotas established for such farms in any crop year shall not exceed two per cent (2%) of the total tobacco acreage and tobacco marketing quotas, respectively, established pursuant to subsection (a) of this section, plus the tobacco acreage and the tobacco marketing quotas established for farms in preceding years pursuant to this subsection.

(c) The tobacco acreage and the tobacco marketing quotas established for each farm shall be fair and reasonable as compared with the tobacco acreage and the tobacco marketing quotas for other farms which are similar with respect to the following: The past production of tobacco on the farm and by the operator thereof; the percentage of total cultivated land in tobacco and in other cash crops; the land, labor, and equipment available for the production of tobacco; the crop rotation practices and the soil and other physical factors affecting the production of tobacco. The acreage quota for farms in a county shall not exceed such maximum percentage of the cultivated acreage as shall be fixed by the county committee, and the maximum so set by the county committee shall not exceed a percentage which will insure the adjustment of the inequalities existing in such county.

(d) The total of the tobacco acreage quotas for any kind of tobacco established for all farms in the State in any crop year shall not exceed a tobacco acreage quota for the State determined by dividing the marketing quota for such kind of tobacco for the State by the base tobacco yield for such kind of tobacco for the State, determined in accordance with subsections (c) and (d) of § 106-474.

The tobacco acreage and the tobacco marketing quotas for any kind of tobacco established for each farm in any crop year pursuant to subsections (a) and (b) of this section shall be adjusted so that the aggregate of the tobacco acreage quotas and the aggregate of the tobacco marketing quotas for all farms in the State does not exceed the tobacco acreage and the tobacco marketing quotas, respectively, for such kind of tobacco established for the State for such year; and the Commission shall prescribe such regulations with respect to such adjustments as will tend to protect the interests of small producers.

(e) If, after marketing quotas are established for farms for any kind of tobacco in any crop year, there is an adjustment, pursuant to subsection (e) of § 106-474, in the marketing quota for such kind of tobacco for the State for such year the marketing quotas for all farms in the State shall be adjusted accordingly.

(f) If a base tobacco yield is not determined by the several state commissions the Commission for this State shall determine a base yield for the State in accordance with the procedure specified in subsections (c) and (d) of § 106-474.

(g) In each county there shall either be published in one local newspaper the following information for each township of the county: (1) The name of each tobacco grower in that township; (2) the number of his tobacco tenants; (3) his total cultivated acres; (4) his total tobacco acreage and tobacco marketing quota; (5) the per cent of his cultivated land represented by his tobacco acreage quota, or else there shall be posted in at least five public places in each township a report for that township showing this information. One copy of such information shall be filed in the office of the clerk of the superior court in the county.

(h) No reduction shall be required in the flue-cured tobacco acreage quota established for any farm if such quota is three and two-tenths acres or less: Provided, that if the operator of the farm reduces the acreage of tobacco grown on the farm in any year below the acreage quota, a proportionate reduction may be required in the marketing quota for the farm.

(i) The terms of this article, relating to the fixing of acreage or marketing

quotas, shall not apply to any grower of burley tobacco, with or without an established acreage base, whose acreage is two acres or less. (1937, c. 22, s. 5; 1937, c. 24, ss. 1-3.)

§ 106-476. Notification of quotas established and adjustments; marketing and resale certificates; charge for surplus tobacco; administrative committees, agents and employees; hearings and investigations; collection of information; regulations.—The Commission is authorized and directed:

(a) To notify as promptly as possible the operator of each farm, for which acreage and marketing quotas are established, of the amount of such quotas for the farm and of any adjustment thereof which may be made from time to time pursuant to this article.

(b) Upon application therefor by the operator of the farm, or by the person marketing the tobacco grown thereon, to issue to the buyer or handler who purchases or handles such tobacco, marketing certificates for an amount of tobacco not in excess of the marketing quota for the farm (as adjusted pursuant to subsection (d) of § 106-475) on which such tobacco is produced, or not in excess of the quantity of tobacco harvested from the crop produced on such farm, whichever is smaller: Provided, that the Commission (in accordance with regulations prescribed by the Commission) may provide for the issuance and transfer of marketing certificates for an amount of tobacco equal to the amount by which the said quantity marketed falls below the said marketing quota for any farm: Provided further, that any regulations pertaining to such issuance and transfer shall be uniform as to the same kind of tobacco in all states entering into a compact with respect to such kind of tobacco.

(c) Upon application therefor by any buyer or handler to issue marketing certificates for surplus tobacco produced on the farm upon payment of a charge of twenty-five per cent (25%) of the gross value, or of one and one-half cents (1½¢) per pound, whichever is larger, of the tobacco covered by such certificates. The buyer or handler, in settling with the grower, shall deduct from the proceeds of sale of such surplus tobacco or, if not sold, from any advance or loan thereon, the amount of such charge, which charge shall be deemed an assessment upon the producer for the purposes of paying the costs, charges, and expenditures provided for by this article.

(d) Upon application therefor by any tobacco dealer to issue, under such terms and conditions as the Commission shall by regulations prescribe, resale certificates for such tobacco purchased by any dealer during any day as such dealer specified will be resold prior to the redrying or processing thereof, where marketing certificates or resale certificates have been issued for such tobacco pursuant to the provisions of this article.

(e) To establish or provide for the establishment of such committees of tobacco producers, and to appoint such agents and employees as the Commission finds necessary for the administration of this article, and to fix the compensation of the members of the county committees referred to in § 106-472, and of such agents and employees: Provided, that the rates of compensation for such committeemen, agents and employees shall be comparable with rates of compensation to persons employed in similar capacities in connection with the administration of the agricultural conservation program, and acceptable to the federal authority.

(f) To provide for the making of such investigations and the holding of such hearings as the Commission finds necessary in connection with the establishment of acreage and marketing quotas for farms and to designate persons to conduct such investigations and hold such hearings in accordance with regulations prescribed by the Commission.

(g) To provide for collection of such information pertaining to the acreage of tobacco grown for harvest on each farm as the Commission may consider necessary for the purpose of checking such acreage with the acreage quota for the farm

and to prescribe any such regulations as may be necessary in connection therewith.

(h) To prescribe such other regulations as the Commission finds necessary to the exercise of the powers and the performance of the duties vested in it by the provisions of this article. (1937, c. 22, s. 6.)

§ 106-477. Board of adjustment and review for each county.—The county committee of each county shall be and it is hereby constituted the board of adjustment and review for its county, whose duty it shall be to adjust and distribute the total base acreage and marketing quotas allocated to the several farms in the county by the Commission so as to effectuate the provisions of this article.

(a) The county board of adjustment and review may designate a clerk for such board.

(b) The board of adjustment and review shall meet on the first Monday in January of each and every year, after giving ten days' notice (by publication in a newspaper published in the county) of the time, place and purpose of the meeting, and may adjourn from day to day while engaged in the adjustment and review of the acreage and marketing quotas of the county, but shall complete their duties on or before the first Monday in February of each and every year: Provided, however, that the Commission shall designate the time within which the said adjustment and review shall be made for the year one thousand nine hundred and thirty-seven.

(c) The board of adjustment and review, on request, shall hear any and all producers, operators, and applicants in the county in respect to their acreage or marketing quotas, or the quotas of others; and after due notice to the person or persons affected, shall allow, increase, or reduce such acreage or marketing quotas as in their opinion will make a fair and equitable allotment within the meaning of this article; and shall cause to be done whatever else may be necessary to make the distribution of county acreage and marketing quotas comply with the provisions of this article; and after the completion of the adjustment and review, a list showing the details thereof shall be prepared, and a majority of the board shall endorse thereon and sign the statement to the effect that the same is the fixed list of quotas for the current year, and said list, or a certified copy thereof, shall be filed in the office of the clerk of the superior court within three days after the completion of the adjustment and review.

(d) Any producer, operator, or person claiming or challenging an allotment quota may except to the decision of the board of adjustment and review and appeal therefrom to the Commission by filing in duplicate a written notice of such appeal with the county committee within ten days after the filing of the list of quotas in the office of the clerk of the superior court. At the time of filing such notice of appeal the appellant shall file with the county committee a statement in duplicate of the grounds of appeal; and within three days after the filing thereof the county committee shall forward or cause to be forwarded to the Commission one copy each of the notice of appeal and statement of grounds of appeal. The Commission shall, on or before the first Monday in March thereafter, hear and determine such appeal, after first giving due notice of the time and place of such hearing to the appellant and to the chairman of the county committee. At the hearing the Commission shall hear relevant and pertinent testimony or affidavits offered by the appellant or county committee; and thereafter, by order, shall modify or confirm the decision of the county board of adjustment and review, and shall deliver to the county committee a certified copy of such order, which shall be binding upon all parties concerned for the current year. (1937, c. 24, s. 4.)

§ 106-478. Handling of funds and receiving payments.—The Commission is authorized:

(a) To accept, deposit with the State Treasurer and provide for the expenditure of such funds as the Congress of the United States may advance or grant to the State for the purpose of administering this article. Such expenditures shall

be in accordance with the Act of Congress authorizing or making such advance or grant.

(b) To receive, through such agents as it may designate, all payments covering the sale of marketing certificates pursuant to subsection (c) of § 106-476; to provide for the fixing of an adequate bond for any person responsible for receiving and disbursing any funds of or administered by the Commission; and to provide for the expenditure of such funds in the manner prescribed in § 106-480. (1937, c. 22, s. 7.)

§ 106-479. "Tobacco Commission Account" deposited with State Treasurer.—All receipts from the sale of marketing certificates pursuant to subsection (c) of § 106-476 and all funds granted or advanced to the State by the Congress of the United States for the purpose of administering this article shall be deposited with the State Treasurer and shall be placed by him in a special fund known as the "Tobacco Commission Account," and the entire amount of such receipts and funds hereby is appropriated out of such Tobacco Commission Account and shall be available to the Commission until expended. (1937, c. 22, s. 8.)

§ 106-480. Purposes for which funds expended; reserve necessary.—Funds of or administered by the Commission shall be expended, in accordance with regulations prescribed by the Commission, for the following purposes: First, to repay to the Treasurer of the United States any funds advanced by the United States to the Commission for the purpose of administering this article: Provided, the United States requires such repayment. Second, to pay any expenses lawfully incurred in the administration of this article, including expenses of any agency of the State incurred at the request of the Commission. Third, to make payment to tobacco producers whose sales of tobacco, because of loss by fire or weather, or diseases affecting their tobacco crops adversely during any crop year, are less than the marketing quotas for their farms for such year. Such payments shall be at a rate per pound of such deficit determined by dividing the funds available for such payments by the total number of pounds by which the sales of tobacco by all producers fell below the marketing quotas for their farms: Provided, that such deficit is due to loss by fire or weather, or disease affecting their crops adversely; and provided further, that such rate of payment shall in no event exceed five cents (5c) per pound, and that no such payments shall be made until there is established as a reserve an amount necessary to pay the expenses which the Commission estimates will be incurred in the administration of this article for a period of one crop year. (1937, c. 22, s. 9.)

§ 106-481. Unlawful to sell, buy, etc., without marketing certificate; restrictions upon dealers.—Upon the establishment of marketing quotas for any kind of tobacco for individual farms for any crop year, pursuant to the provisions of this article, it shall be unlawful:

(a) For any person knowingly to sell, to buy, to redry or to condition or otherwise process any of such kind of tobacco harvested in such crop year unless the marketing certificates therefor have been issued as provided in this article.

(b) For any dealer to resell any of such kind of tobacco for which marketing certificates have not been issued as aforesaid prior to the redrying, conditioning, or processing thereof, except in his own name, or to resell any such tobacco except that purchased and owned by him and covered by a marketing certificate or resale certificate previously issued showing such dealer to be the purchaser of such tobacco, or to redry, condition, or process or to have redried, conditioned, or processed, prior to the resale thereof, any such tobacco covered by a resale certificate unless the resale certificate issued with respect thereto is surrendered to the Commission. (1937, c. 22, s. 10.)

§ 106-482. Violation punishable by forfeiture of sum equal to three times value of tobacco.—Any person willfully selling, buying, redrying, conditioning, or processing tobacco of any kind with respect to which this article is effective for which marketing certificates or resale certificates have not been issued as provided in this article, or any person willfully participating or aiding in the selling, buying, redrying, conditioning, or processing of tobacco not covered by such marketing or resale certificates, or any person offering for sale or selling any tobacco except in the name of the owner thereof, shall forfeit to the State a sum equal to three times the current market value of such tobacco at the time of the commission of such act, which forfeiture shall be recoverable in a civil suit brought in the name of the State. (1937, c. 22, s. 11.)

§ 106-483. Forfeiture for harvesting from acreage in excess of quota.—Any operator willfully harvesting or willfully permitting the harvesting of tobacco on a farm from an acreage in excess of the acreage quota for the farm shall forfeit to the State a sum equal to fifty dollars (\$50.00) per acre of that acreage harvested in excess of the acreage quota for the farm, which forfeiture shall be recoverable in a civil suit brought in the name of the State. (1937, c. 22, s. 12.)

§ 106-484. Violation of article a misdemeanor.—Any person violating any provisions of this article, or of any regulation of the Commission issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not more than fifty dollars (\$50.00) for the first offense and not more than one hundred dollars (\$100.00) for each subsequent offense. (1937, c. 22, s. 13.)

§ 106-485. Penalty for failure to furnish information on request of Commission.—All tobacco producers, warehousemen, buyers, dealers, and other persons having information with respect to the planting, harvesting, marketing, or redrying or conditioning or processing of tobacco in this State for sale or resale to manufacturers, domestic or foreign, shall from time to time, upon the written request of the Commission or its duly authorized representative, furnish such information and file such returns as the Commission may find necessary or appropriate to the enforcement of this article. Any person willfully failing or refusing to furnish such information or to file such return, or willfully furnishing any false information or willfully filing any false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not more than one hundred dollars (\$100.00) for each such offense. (1937, c. 22, s. 14.)

§ 106-486. Courts may punish or enjoin violations.—All courts of this State of competent jurisdiction are hereby vested with jurisdiction specifically to punish violations of this article, and the superior courts of the State are vested with jurisdiction, upon application of the Commission, to enjoin and restrain any person from violating the provisions of this article or of any regulations issued pursuant to this article. (1937, c. 22, s. 15.)

§ 106-487. Attorneys for State to institute proceedings, etc.; Commission to report violations to solicitors, etc.—Upon the request of the Commission it shall be the duty of the several attorneys for the State, in their respective jurisdictions, to institute proceedings to punish for the offenses, enforce the remedies, and to collect the forfeitures provided for in this article, and it shall be the duty of the Commission to call to the attention of the prosecuting officers of the State any violation of any of the criminal provisions of this article. (1937, c. 22, s. 16.)

§ 106-488. Receipts from surplus produced in other states, paid to commission of such states; co-operation with other commissions.—In order to assure the proper co-ordination of the administration of this article with the administration of similar acts of other states, marketing certificates and resale

certificates shall be issued by the Commission, in accordance with regulations prescribed by the Commission, with respect to tobacco marketed in this State, or redried, conditioned, or processed in this State prior to the first sale thereof, or resold, even though such tobacco was produced in another state, and the receipts from sales of marketing certificates for surplus tobacco produced in such other state shall be paid to the Commission of the State in which such tobacco was produced, and the Commission shall co-operate with and assist the Commission of any other state in obtaining such records as may be necessary to the administration of any similar act of such state. (1937, c. 22, s. 18.)

§ 106-489. **Form and provisions of compact.**—The compact referred to in § 106-473 shall contain the provisions shown below, subject to such alterations or amendments as shall not be in conflict with the provisions of this article, and as shall be agreed upon from time to time by the states which enter into such compact.

COMPACT

This agreement entered into this day of between the State of by, Governor; the State of by, Governor; the State of by, Governor, and the State of by, Governor, Witnesseth:

Whereas, the parties hereto have each enacted a state statute providing for the regulation and control of the production and sale of tobacco in the states, and providing for the protection of the producers' tobacco crops from the adversities of unfavorable weather, crop diseases, and fire; and

Whereas, it is the desire of the parties uniformly to enforce each state statute so as to accomplish the purposes for which each act was enacted:

Now, therefore, the parties do hereby jointly and severally agree as follows:

(1) To co-operate with each other in establishing for each crop year a marketing quota for each state for each kind of tobacco referred to in the respective state statutes with respect to which such state statutes are or will be in effect for such crop year.

(2) To co-operate with each other in formulating such regulations as will assure uniform and effective administration and enforcement of each of the afore-said state statutes.

(3) Not to depart from or fail to enforce to the best of its ability any regulation concerning the enforcement of the state statutes without the consent of a majority of the members of the tobacco commissions of each of the several parties to this compact.

In witness whereof, the parties have hereunto set their hands as of the day of the year first above written.

State of
By
Governor.

State of
By
Governor.

State of
By
Governor.

State of
By
Governor.

(1937, c. 22, s. 19.)

ARTICLE 43.

Threshers of Wheat.

§ 106-490. **Licensing of power threshers.**—It shall be the duty of any person, firm or corporation who shall engage in power threshing in any county in North Carolina to first secure a license from the county in which the operator resides: Provided, that securing of a license in one county shall be sufficient to allow the person, firm or corporation to operate in any county of the State. (1935, c. 329, s. 1.)

§ 106-491. **Issuance by registers of deeds; expiration date; fee; threshers of own crops exempted.**—It shall be the duty of the register of deeds of each of the several counties of the State to issue a license to engage in threshing in that county to any person, firm or corporation applying for same. Every license issued under the provisions of this article shall expire on the first day of April succeeding the date of the issue of such license. To defray the necessary expenses involved, the register of deeds may make a charge not to exceed fifty cents for each license issued: Provided, that operators who thresh their own crops only shall be exempt from any license cost. (1935, c. 329, s. 2.)

§ 106-492. **Records and reports of threshers, violation made misdemeanor.**—It shall be the duty of every person, firm or corporation, who shall engage in threshing for others or themselves, in any county of the State, to keep a complete and accurate record of the acreages harvested and amounts threshed for each farm, and to promptly make, upon blanks to be furnished by the register of deeds of the county, reports showing the acreages and the amounts threshed by said person, firm or corporation, in said county during the preceding season. A violation of the provisions of this section shall be deemed a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars: Provided, the register of deeds shall give thirty days' notice to the licensee before indictment is made, and if the licensee makes said report within said time no indictment shall be made. (1935, c. 329, s. 3.)

§ 106-493. **Public notice of requirements; prosecution for noncompliance.**—It shall be the duty of the register of deeds of each of the several counties of the State to give public notice of these requirements before the threshing seasons and to make diligent inquiry as to whether the provisions of § 106-492 have been complied with, and upon failure of any person, firm or corporation to comply with same, to swear out a warrant before some justice of the peace of the county and the procedure thereon shall be as in other criminal cases. (1935, c. 329, s. 4.)

§ 106-494. **Report of register of deeds to Commissioner of Agriculture.**—It shall be the duty of the register of deeds of each of the several counties in the State to promptly submit, upon blanks to be furnished by the Commissioner of Agriculture, a report to the Commissioner of Agriculture showing the crop acreages harvested and amounts that have been threshed in the said county in the preceding crop season. (1935, c. 329, s. 5.)

§ 106-495. **Commissioner to furnish blank forms to registers of deeds; publication of reports.**—It shall be the duty of the Commissioner of Agriculture to furnish to the registers of deeds of the several counties of the State, on or before the first day of May in each year, a sufficient number of blank forms for threshers' licenses, operators' threshing reports, and registers' of deeds summary reports. The Commissioner of Agriculture shall also collect and publish the county results of these reports prior to the next threshing season. (1935, c. 329, s. 6.)

ARTICLE 44.

Unfair Practices by Handlers of Farm Products.

§ 106-496. **Protection of producers of farm products against unfair trade practices.**—The Board of Agriculture is hereby authorized to make rules and regulations necessary to protect producers of farm products from loss through financial irresponsibility and unfair, harmful and unethical trade practices of persons, firms and corporations (hereinafter referred to as “handlers”) and their agents, who incur financial liability for farm products. (1941, c. 359, s. 1.)

§ 106-497. **Permits required of handlers of farm products not operating on cash basis.**—No person shall act as a handler of farm products on any basis except a cash basis, until he obtains a permit from the Commissioner of Agriculture. The Commissioner of Agriculture may require from each applicant such verified information as he sees fit in order to determine the applicant's financial responsibility and reputation, and the Board may make rules and regulations as to issuing permits. (1941, c. 359, s. 2.)

§ 106-498. **Establishment of financial responsibility before permit issued; bond.**—No such permit shall be issued to any handler who is not operating on a strictly cash basis and who is incurring or may incur financial liability to any grower, until such person, firm, or corporation shall furnish to the Commissioner of Agriculture sufficient and satisfactory evidence of their ability to carry out their contract or furnish a satisfactory bond in an amount not to exceed ten thousand (\$10,000) dollars. The Commissioner of Agriculture may require a new bond or additional bonds up to the ten thousand dollar (\$10,000.00) limit when he finds it necessary for the protection of the producer. Such bonds shall be payable to the State in favor of every contract producer or consignor of farm products, and shall be continued upon compliance with all the provisions of this article, and the faithful fulfilment of all contracts, and for the faithful accounting for and handling of produce by such handler, and for payment to the producer of the net proceeds of all consignments and sales. Any producer claiming to be injured by the fraud, deceit or willful negligence of any commission merchant or contractor, or by his failure to comply with this article or with the terms of a written contract between such parties, may bring action on the bond against both principal and surety in any court of competent jurisdiction and may recover the damages found by the court to be caused by such acts complained of. (1941, c. 359, s. 3.)

§ 106-499. **Contracts between handlers and producers; approval of Commissioner.**—No handler shall enter into any written contract with a producer in North Carolina, for the production, delivery, or sale of farm products, until he files with the Commissioner of Agriculture a true copy of the contract and it is examined and approved by the Commissioner. The Commissioner may withhold his approval in his discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this article. (1941, c. 359, s. 4.)

§ 106-500. **Additional powers of Commissioner to enforce article.**—In order to enforce this article, the Commissioner of Agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

(a) To inspect or investigate transactions for the sale or delivery of farm products to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, farm products and other

articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under his contracts and to pay for it as agreed;

(b) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this article or of rules, regulations, and orders made by the Board or the Commissioner. Any party disobeying any order or subpoena of the Commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the Commissioner;

(c) To issue all such rules and regulations, with the approval of the Board, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this article. (1941, c. 359, s. 5.)

§ 106-501. Violation of article or rules made misdemeanor.—Any person who violates the provisions of this article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than one year, or both. (1941, c. 359, s. 6.)

ARTICLE 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart.—For the purpose of the holding annually of a State Fair and exposition which will properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart two hundred acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1.)

§ 106-503. Board of Agriculture to operate fair.—The State Fair provided for in § 106-502, shall be managed, operated and conducted by the Board of Agriculture established in § 106-2. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State Fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State Fair and shall hold and conduct said State Fair with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said Fair, and/or lease said Fair properties so as to provide a State Fair. (1931, c. 360, s. 3.)

Editor's Note.—The act inserting this operation of the fair by a board of directors. section repealed Public Laws 1927, c. 209, s. 2, providing for the management and

§ 106-503.1. Board authorized to construct and finance facilities and improvements for Fair.—1. **Borrowing Money and Issuing Bonds.**—For the purpose of building, enlarging and improving the facilities on the properties of the State Fair, the State Board of Agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars (\$100,000.00), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the Governor

and Council of State: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the State of North Carolina, and the credit of the State of North Carolina and the State Department of Agriculture or the agricultural fund, other than the revenue of the State Fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other State Fair assets may be pledged as security for the payment of any bonds that may be issued.

2. **Contracts and Leases; Pledge of Gate Receipts, etc.**—For the further purpose of acquiring, constructing, operating and financing said properties and facilities for the North Carolina State Fair, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State Fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

3. **Gifts and Endowments.**—The State Board of Agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the State Fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009.)

§ 106-504. Lands dedicated by State may be repossessed at will of General Assembly.—Any lands which may be dedicated and set apart under the provisions of this article may be taken possession of and repossessed by the State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence.—Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, subject to any other applicable provisions of law, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, as may be needful to promote the objects of their association.

Whenever any such association is formed subsequent to April 1, 1949, a copy of the articles of incorporation shall be filed with the Secretary of State, together with any other information the Secretary of State may require. A fee of ten dollars (\$10.00) shall be paid to the Secretary of State when such articles are filed. Upon receipt of such articles in proper form, and such other information as may be required, and the filing fee, the Secretary of State shall issue a charter of incorporation.

The corporate existence shall continue as long as there are ten members, during the will and pleasure of the General Assembly. (1852, c. 2, ss. 1, 2, 3; R. C., c. 2, ss. 6, 7; Code, s. 2220; Rev., ss. 3868, 3869; C. S., s. 4941; 1949, c. 829, s. 2.)

Cross Reference.—As to power of board of county commissioners to promote farmers cooperative demonstration work, see § 153-9, paragraph 35.

Editor's Note. — The 1949 amendment inserted the words "subject to any other

applicable provisions of law" in lines eight and nine of the first paragraph and struck out of said paragraph the words "not exceeding ten thousand dollars in value." The amendment also inserted the second paragraph.

§ 106-506. Organization; officers; new members.—Such society shall be organized by the appointment of a president, two vice-presidents, a secretary

and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (1852, c. 2, s. 3; R. C., c. 2, s. 7; Code, s. 2221; Rev., s. 3869; C. S., s. 4942.)

§ 106-507. Exhibits exempt from State and county taxes.—Any society or association organized under the provisions of this chapter, desiring to be exempted from the payment of State, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than sixty (60) days prior to the opening date of its fair, file an application with the Commissioner of Revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The Commissioner of Revenue shall immediately refer said application to the Commissioner of Agriculture for approval or rejection. If the application is approved by said Commissioner of Agriculture, the Commissioner of Revenue shall issue a permit to said society or association authorizing it to exhibit within its fair grounds and during the period of its fair, without the payment of any State, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved. Provided, however, that the Commissioner of Revenue shall have the right to cancel said permit at any time upon the recommendation of said Commissioner of Agriculture. Any society or association failing to so obtain a permit from the Commissioner of Revenue or having its permit canceled shall pay the same State, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the State shows, carnivals, or other attractions. (1905, c. 513, s. 2; Rev., s. 3871; C. S., 4944; 1935, c. 371, s. 107; 1949, c. 829, s. 2.)

Editor's Note.—Prior to the 1949 amendment a committee exercised the authority now vested in the Commissioner of Agriculture.

§ 106-508. Funds to be used in paying premiums.—All moneys so subscribed, as well as that received from the State treasury as herein provided, shall after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their bylaws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufacturers, mechanical implements, tools and productions as are of the growth and manufacture of the county or region, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county or region wherein such societies are respectively organized. (1852, c. 2, s. 7; R. C., c. 2, s. 9; Code, s. 2223; Rev., s. 3873; C. S., s. 4945; 1949, c. 829, s. 2.)

Editor's Note.—The 1935 amendment re-wrote this section, and the 1949 amendment inserted the words "or region" after the word "county" at two places in the section.

§ 106-509. Annual statements to State Treasurer.—Each agricultural society entitled to receive money from the State Treasurer shall, through its treasurer, transmit to the Treasurer of the State, in the month of December or before, a statement showing the money received from the State, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (1852, c. 2, s. 8; R. C., c. 2, s. 10; Code, s. 2224; Rev., s. 3874; C. S., s. 4946.)

§ 106-510. Publication of statements required.—Each agricultural society receiving money from the State under this chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and

reports of its committees, in at least one newspaper in the State; and evidence that the requirements of this chapter have been complied with shall be furnished to the State Treasurer before he shall pay to such society the sum of fifty dollars for the benefit of such society for the next year. (1852, c. 2, s. 9; R. C., c. 2, s. 11; Code, s. 2225; Rev., s. 3875; C. S., s. 4947.)

§ 106-511. **Records to be kept; may be read in evidence.**—The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party. (1852, c. 2, s. 5; R. C., c. 2, s. 12; Code, s. 2226; Rev., s. 3876; C. S., s. 4948.)

Part 3. Protection and Regulation of Fairs.

§ 106-512. **Lien against licensees' property to secure charge.**—All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fair grounds, or which shall rent any ground space for carrying on any kind of business in such fair grounds, either upon stipulated price or for a certain per cent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C. S., s. 4950.)

§ 106-513. **Notice of sale to owner.**—Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property ten days before such sale, if he or it be a resident of the State, but if a nonresident of the State, or his or its residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C. S., s. 4951.)

§ 106-514. **Unlawful entry on grounds a misdemeanor.**—If any person, after having been expelled from the fair grounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over the enclosing structure of said fair grounds and enter the same, or shall enter the enclosure of said fair grounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1870-1, c. 184, s. 3; Code, s. 2795; 1901, c. 291; Rev., s. 3669; C. S., s. 4952.)

§ 106-515. **Assisting unlawful entry on grounds a misdemeanor.**—It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days. (1915, c. 242, ss. 3, 4; C. S., s. 4953.)

§ 106-516. **Vendors and exhibitors near fairs to pay license.**—Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, ferris wheel, or any other device for public amusement, within one-fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as a principal or agent:

Provided, this section shall not apply to any business established sixty days prior to the beginning of such fair. (1915, c. 242, s. 5; C. S., s. 4954.)

§ 106-517. Application for license to county commissioners.—Every such person mentioned in § 106-516 shall apply in advance for a license to the board of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of twelve months from its date. (1915, c. 242, s. 6; C. S., s. 4955.)

§ 106-518. Unlicensed vending, etc., near fairs a misdemeanor.—Any person violating the provisions of §§ 106-516 and 106-517 shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars or imprisonment not to exceed thirty days, at the discretion of the court. (1915, c. 242, s. 7; C. S., s. 4956.)

§ 106-519. Commissioners may refuse to license shows within five miles.—The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild west show, dog and pony show, or carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments sixty days prior to the date of such exhibition. (1913, c. 163, s. 1; C. S., s. 4957.)

§ 106-520. Local aid to agricultural, animal, and poultry exhibits.—Any city, town, or county may appropriate not to exceed one hundred dollars to aid any agricultural, animal, or poultry exhibition held within such city, town, or county. (1919, c. 135; C. S., s. 4958.)

Part 4. Supervision of Fairs.

§ 106-520.1. Definition.—As used in this article, the word “fair” means a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.2. Use of “fair” in name of exhibition.—It shall be unlawful for any person, firm, corporation, association, club, or other group of persons to use the word “fair” in connection with any exhibition, circus, show, or other variety of exhibition unless such exhibition is a fair within the meaning of G. S. 106-520.1. (1949, c. 829, s. 1.)

§ 106-520.3. Commissioner of Agriculture to regulate.—The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, is hereby authorized, empowered and directed to make rules and regulations with respect to classification, operation and licensing of fairs, so as to insure that such fairs shall conform to the definition set out in G. S. 106-520.1, and shall best promote the purposes of fairs as set out in such definition. Every fair, and every exhibition using the word “fair” in its name, except fairs classified by the Commissioner of Agriculture as noncommercial community fairs, must comply with the standards, rules and regulations set up and promulgated by the Commissioner of Agriculture, and must secure a license from the Commissioner of Agriculture before such exhibition or fair is staged or operated. No license shall be issued for any such exhibition or fair unless it meets the standards and complies with the rules and regulations of the Commissioner of Agriculture with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.4. **Local supervision of fairs.**—No county or regional fairs shall be licensed to be held unless such fair is operated under supervision of a local board of directors who shall employ appropriate managers, who shall be responsible for the conduct of such fair, and otherwise comply with the standards, rules and regulations promulgated by the Commissioner of Agriculture. The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, shall make rules and regulations requiring county and regional fairs to emphasize agricultural, educational, home and industrial exhibits by providing adequate premiums. (1949, c. 829, s. 1.)

§ 106-520.5. **Reports.**—Every fair shall make such reports to the Commissioner of Agriculture, as said Commissioner may require. (1949, c. 829, s. 1.)

§ 106-520.6. **Premiums and premium lists supplemented.**—The State Board of Agriculture may supplement premiums and premium lists for county and regional fairs and the North Carolina State Fair, and improve and expand the facilities for exhibits at the North Carolina State Fair, at any time or times, out of any funds which may be available for such purposes. (1949, c. 829, s. 1.)

§ 106-520.7. **Violations made misdemeanor.**—Any person who violates any provision of G. S. 106-520.1 through G. S. 106-520.6 is guilty of a misdemeanor punishable by a fine or imprisonment in the discretion of the court. (1949, c. 829, s. 1.)

ARTICLE 46.

Erosion Equipment.

§ 106-521. **Counties authorized to provide farmers with erosion equipment.**—The county commissioners in the several counties of the State are hereby authorized and empowered to purchase the necessary equipment to be used as provided in this article by farmers in the cultivation of their lands in such manner as may best tend to prevent erosion; and they are authorized to put such equipment as they deem necessary for the purpose in the hands of farmers who may apply for the same, either by way of resale to the said farmers, or upon a rental basis, or by guarantee, as may in their judgment be deemed best, of the purchase price of the said equipment directly sold to the said farmers. (1935, c. 172, s. 1.)

§ 106-522. **Application for assistance.**—Any person or persons, corporation or concern, engaged in the cultivation of a farm or farms in this State may apply to the county commissioners for assistance under this article, stating in the said application as nearly as may be the size or area of the cultivated lands, its condition, the kind of soil, the amount of erosion, if any, the topography of the farm, its present manner of drainage and the kinds of crops usually cultivated thereon. It shall also state what means have been used heretofore, if any, to prevent soil erosion, and specifically the extent to which erosion now exists upon the premises. At any time subsequent to the said application, if relief is extended to him, he shall, when so requested by the said county commissioners or any other person delegated by them to receive the information, make detailed reports as to the condition of his said cultivated lands, the extent to which provision has been made thereon to prevent soil erosion, with the results of same. There shall also be stated in the said application the kind and quantity of equipment which, in the judgment of the applicant, is necessary for use upon his farm. (1935, c. 172, s. 2.)

§ 106-523. **Investigation and extending relief.**—Upon the filing of such application the county commissioners shall cause due investigation to be made with reference thereto, and for their guidance; shall fully consider the same and if, in their opinion, the relief asked for should be extended, they shall thereupon pro-

ceed to supply or have supplied such equipment as their judgment may be necessary under the circumstances, as provided in this article. (1935, c. 172, s. 3.)

§ 106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment.—The county commissioners are authorized and empowered to purchase the equipment by them deemed to be necessary and supply the applicant therewith, upon such terms and conditions of purchase, rental or repayment as may be deemed by them just and proper, and which will save the county from loss in the matter. To that end, they are authorized to accept from the applicant such notes and security, if any by them are deemed necessary, or shall make with them such rental contracts as may be reasonably prudent and safe in the premises. They are further authorized and empowered, when in their judgment it may be deemed advisable, to guarantee the payment to the seller, for such equipment as may be directly purchased by the applicant for the use aforesaid: Provided, however, that the purchase of the said equipment has been previously approved by the county commissioners. (1935, c. 172, s. 4.)

§ 106-525. Guarantee of payment where equipment purchased by federal agencies.—Where the said equipment may be purchased by any federal agency and by it furnished to any person, persons, firm or corporation engaged in the actual cultivation of the soil, the county commissioners are authorized, under such terms and conditions as to them may seem advisable, and as shall conserve the public interest and be just and proper to the county, to guarantee the payment of the purchase price of such equipment in full or the interest upon the obligations made in their purchase, and may do so in full or in part. (1935, c. 172, s. 5.)

§ 106-526. Expense of counties extending relief made lien on premises of applicant.—In the event the county commissioners shall extend any relief under this article, to the extent of the money furnished or the obligation of the county with respect thereto, the same shall be a lien upon the premises, lands and tenements of the owner and applicant for such relief, securing the repayment of the funds furnished by the county and securing the county against any loss by reason of its obligation in any respect, the said lien to be foreclosed in all respects as provided in the law for deeds of trust or real estate mortgages: Provided, however, that in case the county itself has entered into an obligation in order to extend to any persons herein named the relief provided in this article, the county shall not be postponed in its relief until loss is actually incurred by it, but may proceed in accordance with the contract and agreement made with the applicant for relief, and when the obligations of the county in any respect are due: Provided, further, that the lien created by this section shall not be effective as against innocent purchasers for value unless and until notice of such lien shall be docketed in the office of the clerk of the superior court of the county in which the land lies in the manner and form provided by law for perfecting laborer's or mechanic's liens against real property. (1935, c. 172, s. 6.)

§ 106-527. Counties excepted.—This article shall not apply to the counties of Alexander, Alleghany, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison, Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

Editor's Note. — The 1937 amendment struck out "Union" from the list of excepted counties.

ARTICLE 47.

State Marketing Authority.

§ 106-528. **State policy and purpose of article.**—It is declared to be the policy of the State of North Carolina and the purpose of this article to promote, encourage and develop the orderly and efficient marketing of products of the home, farm, sea and forest; to establish, maintain, supervise and control, with the co-operation of counties, cities and towns, centrally located markets for the sale and distribution of such products, so as to promote a steady flow of commodities, properly graded and labelled, into the channels of trade at the time and place to enable the producer to get the market price and the consumer to get a product in keeping with the price paid. (1941, c. 39, s. 1.)

§ 106-529. **State Marketing Authority created; members and officers; commodity advisers; meetings and expenses.**—To secure these aims, there is hereby created an incorporated public agency of the State, to be known as the State Marketing Authority, hereinafter referred to as the "Authority." It shall consist of the members of the State Board of Agriculture, and the Commissioner of Agriculture shall be the chairman. They shall perform the duties and exercise the powers herein set out as a part of their official duties as members of the Board of Agriculture. The Governor shall appoint from time to time commodity advisers to plan with the Authority the programs undertaken in their respective communities. The Authority shall elect and prescribe the duties of a secretary-treasurer, who shall not be a member of the Authority. He shall give bond in such amount as the Authority shall determine in some reliable surety company doing business in North Carolina, and the Authority shall pay the premiums. The Authority shall meet in regular session annually at a fixed place and date, and shall meet in special session at such other times and places as the chairman may request. The members shall receive no salary, but shall receive actual expenses plus seven dollars per day for actual time spent in performing their duties. (1941, c. 39, s. 2.)

§ 106-530. **Powers of Authority.**—The Authority shall have the following powers:

(1) To sue and be sued in its corporate name in any court or before any administrative agency of the State or of the United States, and to enter into agreements with the United States Department of Agriculture or any other legally constituted State or federal agency, or with any county, city or town in the furtherance of the purposes of this article.

(2) To plan, build, construct, or cause to be built or constructed, or to purchase, lease or acquire the use of any warehouses or other facilities that may be necessary for the successful operation by the Authority of wholesale markets for products of the home, farm, sea and forest at chosen points in North Carolina. The Authority may make such contracts as may be needed for these purposes. In no case shall the Authority be responsible for any rent except from the income of the market in excess of other operating expenses. The Authority may select and employ for each market capable managers, who shall be familiar with the problems of the grower and the distributor, and of the marketing of farm products, and who shall have the business ability and training to operate a market and to plan for its proper development and growth in order best to serve the interests of producers, distributors, consumers in the area, and the general public. The managers may employ assistants and agents with the approval of the Authority. The Authority may make such regulations as will promote the policy of this article, as to the manner in which the markets shall be operated, the business conducted, and stalls sublet to dealers.

(3) To fix the terms upon which individual, co-operative or corporate wholesale merchants, warehouses or warehousemen may place their facilities or serv-

ices under the supervision and regulation of the Authority. The Authority may extend to any such wholesale merchants, warehouses or warehousemen marketing benefits in the form of inspection, market informational and news service and may make regulations as to the operation of such facilities or services and as to forms, reports, handling, grades, weights, packages, labels, and other standards for the products handled by such merchants, warehouses or warehousemen.

(4) To fix rentals and charges for each type of service or facility in the markets under its control, taking into consideration the cost of such facility or service, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves for repairs, depreciation, expansion, and similar items. These rentals and charges shall not bring any profit to any agency over and above the costs of operation, necessary reserves, and debt service.

(5) To issue permits to itinerant dealers in intrastate commerce, who express a willingness to come under the program of the State Marketing Authority. Such permits shall enable the holders to solicit orders and to buy and sell produce under the rules and regulations of the Authority and in conformance with §§ 106-185 to 106-196 and not inconsistent with the United States Perishable Agricultural Commodities Act, one thousand nine hundred and thirty (46 Stat. 531).

(6) To issue bonds and other securities to obtain funds to acquire, construct, and equip warehouses to be used in carrying out the purposes of this article. The bonds shall be entitled "North Carolina Marketing Authority Bonds" and shall be issued in such form and denominations and shall mature at such time or times, not exceeding thirty years after their date, and shall bear such interest, not exceeding five per cent per annum, payable either annually or semiannually, as the Authority shall determine. They shall be signed by the chairman of the Authority, and the corporate seal affixed or impressed upon each bond and attested by the secretary-treasurer of the Authority. The coupons shall bear the facsimile signature of the chairman officiating when the bonds are issued. Any issue of these bonds and notes may be sold publicly, or at private sale for not less than par to the Reconstruction Finance Corporation or other State or federal agency, or may be given in exchange to any county, city, town or individual for the lease or purchase of property to be used by the Authority. To secure such indebtedness, the Authority may give mortgages or deeds of trust, executed in the same manner as the bonds, on the property purchased or acquired, and may pledge the revenues from the markets in excess of operating expenses, interest and insurance: Provided, that each market shall be operated on a separate financial basis, and only such revenues and properties of each separate market shall be liable for the obligations of that market. No obligations incurred by the Authority shall be obligations of the State of North Carolina or any of its political subdivisions, or a burden on the taxpayers of the State or any political subdivision. This does not prevent the State or any of its agencies, departments or institutions, or any private or public agency from making a contribution to the Authority, in money or services or otherwise.

Bonds and notes issued under this article shall be exempt from all State, county or municipal taxes or assessments of any kind; the interest shall not be taxable as income, nor shall the notes, bonds, nor coupons be taxable as part of the surplus of any bank, trust company or other corporation.

Any resolution or resolutions authorizing any bonds shall contain provisions which shall be a part of the contract with the holders of the bonds, as to:

(a) Pledging the fees, rentals, charges, dues, tolls, and inspection and sales fees, and other revenues to secure payment of the bonds;

(b) The rates of the fees or tolls to be charged for the use of the facilities of the warehouse or warehouses, and the use and disposition of the revenues from its operation;

(c) The setting aside of reserves or working funds, and the regulation and disposition thereof;

(d) Limitations on the purposes to which the proceeds of sale of any issue of bonds may be applied;

(e) Limitations on the issuance of additional bonds; and

(f) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(7) To accept grants in aid or free work.

(8) To adopt, use and alter a corporate seal.

(9) To dispossess tenants for nonpayment of rent and for failure to abide by the regulations of the Authority.

(10) To hire necessary agents, engineers, and attorneys, and to do all things necessary to carry out the powers granted by this article. (1941, c. 39, s. 3.)

§ 106-531. Discrimination prohibited; restriction on use of funds.

—The Authority shall not permit:

(1) Any discrimination against the sale, on any of the markets under their control, of any farm product because of type of operator or area of production.

(2) The use of any of its funds for any purpose other than for the support, necessary expansion, and operation of this State marketing system, or the use of any of its funds to establish any retail market or to build or furnish more than one market in any town. (1941, c. 39, s. 4.)

§ 106-532. Fiscal year; annual report to Governor.—The Authority shall operate on a fiscal year, which shall be from July first to June thirtieth. The Commissioner of Agriculture shall file an annual report with the Governor containing a statement of receipts and disbursements and the purposes of such disbursements, and a complete statement of the financial condition of the Authority, and an account of its activities for the year. (1941, c. 39, s. 5.)

§ 106-533. Application of revenues from operation of warehouses.

—All rentals and charges, fees, tolls, storage and sales commissions and revenues of any sort from operation of each warehouse shall be applied to the payment of the cost of operating and administering the warehouse and market facilities including interest on bonds and other evidences of indebtedness issued therefor, and the cost of insurance against loss by injury to persons or property, and the balance shall be paid to the secretary-treasurer of the Authority and be used to provide a sinking fund to pay at or before maturity all bonds and notes and other evidences of indebtedness incurred for and on behalf of the building, constructing, maintaining and operating of each warehouse. A separate sinking fund account shall be kept for each market, and no market shall be liable for the obligations of any other market. (1941, c. 39, s. 6.)

§ 106-534. Exemption from taxes and assessments.—The Authority shall be regarded as performing an essential governmental function in constructing, operating or maintaining these markets, and shall be required to pay no taxes or assessments on any property acquired or used by it for the purposes herein set out. (1941, c. 39, s. 7.)

ARTICLE 48.

Relief of Potato Farmers.

§ 106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system.—From and after March 15, 1941, every person, firm, association or corporation engaged in the practice of supplying growers of Irish potatoes in this State with seed potatoes and fertilizer and other supplies for the purpose of growing a crop of Irish potatoes under the system commonly known as the share planting system and who enter into a contract with such

grower and/or growers on or before planting them to furnish such grower with seed potatoes, fertilizer or other necessary supplies, or to perform services in connection with the gathering of such crop and marketing the same, shall at the time of entering into such contract, agree in writing, with such grower that he or it will guarantee that the grower shall receive at the time such potatoes are marketed an amount of not less than ten dollars (\$10.00) for each bag of seed potatoes planted by the grower or growers from such person, firm, association or corporation who, under the agreement, furnished such seed potatoes and other supplies to the grower or growers thereof. (1941, c. 354, s. 1.)

Local Modification. — Bladen, Durham, Ingham, Sampson and Union: 1941, c. 354, Greene, Lenoir, Pender, Randolph, Rock- s. 5.

§ 106-536. Additional net profits due grower not affected.—The minimum amount to be paid the grower by those furnishing said supplies under the terms of this article shall in nowise affect any additional net profit due the grower, should any such additional profits be shown. (1941, c. 354, s. 2.)

§ 106-537. Minimum payments only compensation for labor and use of equipment, land, etc.—The payment of the stipulated ten dollars (\$10.00) per bag of said seed potatoes furnished said grower or growers by any firm, person, association or corporation shall be compensation only for labor and work done and for the use of any animal or machine and equipment used or furnished by said grower or growers, and also use of land in growing said potato crop, and this amount shall be paid to said grower from returns from said crops so produced; and the said ten dollars (\$10.00) shall not be computed as any part of any other expenses furnished by said person, firm, association or corporation furnishing other materials or supplies for the purpose of said share planting. (1941, c. 354, s. 3.)

§ 106-538. Time of payments; article not applicable to landlord-tenant contracts.—The said sum of ten dollars (\$10.00) per bag of seed potatoes shall be paid to said grower or growers by said firm, person, association or corporation as herein provided, for share planting of potatoes, not later than thirty (30) days after the delivery of last potatoes grown under the share planting contract existing between said grower or growers and the said person, firm, association or corporation: Provided that nothing in this article shall apply to contracts entered into between landowners and their respective tenants. (1941, c. 354, s. 4.)

ARTICLE 49.

Poultry.

§ 106-539. National poultry improvement plan.—In order to promote the poultry industry of the State, the Department of Agriculture is hereby authorized to co-operate with the United States Department of Agriculture in the operation of the national poultry improvement plan. (1945, c. 616, s. 1.)

§ 106-540. Rules and regulations.—The State Board of Agriculture is hereby authorized to make such regulations as may be necessary, after public hearing following due public notice, to carry out the provisions of said national poultry improvement plan and to promulgate regulations setting up minimum standards for the operation of public hatcheries and to regulate chick dealers and jobbers and to provide standards and to regulate the shipping into this State of baby chicks, turkey poults, and hatching eggs and for the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2.)

§ 106-541. Definitions.—For the purpose of this article, a public hatchery shall be defined as any establishment that artificially hatches and sells or offers

for sale to the public baby chicks or the young of any domestic fowl under six weeks of age, or hatching eggs, or that does custom hatching. A chick dealer or jobber shall mean any person, firm or corporation that buys baby chicks or turkey poults and sells or offers same for sale. The terms "mixed chicks" or "assorted chicks" shall mean chicks of two or more distinct breeds. The term "crossbred chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of distinct breed. (1945, c. 616, s. 3.)

§ 106-542. Hatcheries and chick dealers to obtain permit to operate.—No person, firm or corporation shall operate a public hatchery and no chick dealer or jobber shall operate within this State without first obtaining a permit from the Department of Agriculture to so operate. Said permit may be cancelled for violation of this article or the regulations promulgated thereunder. Any person who is refused a permit or whose permit is revoked may appeal within thirty (30) days of such refusal or revocation to any court of competent jurisdiction. (1945, c. 616, s. 4.)

§ 106-543. Requirements of national poultry improvement plan must be met.—All baby chicks, turkey poults and hatching eggs sold or offered for sale shall originate in flocks that meet the requirements of the national poultry improvement plan as administered by the North Carolina Department of Agriculture and regulations issued by authority of this article for the control of pullorum disease: Provided, that nothing in this article shall require any hatchery to adopt the national poultry improvement plan. (1945, c. 616, s. 5.)

§ 106-544. Shipments from out of State.—All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum disease control provided for in this article and the regulations issued by authority of this article and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin, certifying same. (1945, c. 616, s. 6.)

§ 106-545. False advertising.—No public hatchery, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7.)

§ 106-546. Notice describing grade of chicks to be posted.—All hatcheries, chick dealers and jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the Department of Agriculture describing the grade of chicks approved by the Department of Agriculture. (1945, c. 616, s. 8.)

§ 106-547. Records to be kept.—Every public hatchery, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9.)

§ 106-548. Fees.—For the purpose of carrying out the provisions of this article and the regulations issued thereunder, the Department of Agriculture is authorized to collect annually from every public hatchery a fee not to exceed ten dollars (\$10.00) where the egg capacity is not more than fifty thousand (50,000) eggs; twenty dollars (\$20.00) where the egg capacity is fifty thousand and one (50,001) to one hundred thousand (100,000) eggs; and thirty dollars (\$30.00) where the egg capacity is over one hundred thousand (100,000). Chick dealers and jobbers shall pay a fee of three dollars (\$3.00) annually, said fees to be used for the enforcement of this article. The minimum fee for any flock tested shall be five dollars (\$5.00) for one hundred birds or less and shall apply also to flocks that are dropped due to heavy infection or other causes. The fee for the

first test shall be four cents (4c) per bird with a charge of two cents (2c) per bird for the second test and one cent (1c) per bird for all subsequent tests, during the same season. (1945, c. 616, s. 10.)

§ 106-549. **Violation a misdemeanor.**—Any person, firm or corporation who shall willfully violate any provision of this article or any rule or regulation duly established by authority of this article shall be guilty of a misdemeanor. (1945, c. 616, s. 11.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-550. **Policy as to promotion of use of, and markets for, farm products; tobacco and cotton excluded.**—It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of agricultural products, including peanuts, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in co-operation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this article, however, shall not include the agricultural products of tobacco or cotton, with respect to which separate provisions and enactments have heretofore been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1.)

Editor's Note.—The 1951 amendment inserted the words "growers" and "production" in the first sentence.

gesting its invalidity as an unlawful delegation of governmental power, see 25 N. C. Law Rev. 396.

For the comment on this article, sug-

§ 106-551. **Federal Agricultural Marketing Act.**—The passage by the Seventy-ninth Congress of a law designated as Public Law 733, and more particularly Title II of that act, cited as "Agricultural Marketing Act of 1946", makes it all the more important for producers, handlers, processors and others of specific agricultural commodities to associate themselves in action programs, separately and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of such law, in respect to research, studies and problems of marketing, transportation and distribution. (1947, c. 1018, s. 2.)

§ 106-552. **Associations, activity, etc., deemed not in restraint of trade.**—No association, meeting or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the producers, handlers and processors of a particular commodity shall be deemed or considered illegal or in restraint of trade. (1947, c. 1018, s. 3.)

§ 106-553. **Policy as to referenda, assessments, etc., for promoting use and sale of farm products.**—It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the State that farmers, producers and growers commercially producing the commodities herein referred to shall be permitted by referendum to be held among the respective groups and subject to the provisions of this article, to levy upon themselves an assessment on such respective commodities or upon the acreage used in the production of the same and provide for the collection of the same, for the purpose of financing or contributing towards the financing of a program of advertising and other methods designed to increase the consumption of and the domestic as well as foreign markets for such agricultural products. Such assessments may also be used for the purpose of financing or contributing toward the financing of

a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 4; 1951, c. 1172, s. 2.)

Editor's Note. — The 1951 amendment added the last sentence.

§ 106-554. Application to Board of Agriculture for authorization of referendum.—Any existing commission, council, board or other agency fairly representative of the growers and producers of any agricultural commodity herein referred to, and any such commission, council, board or other agency hereafter created for and fairly representative of the growers or producers of any such agricultural commodity herein referred to, may at any time after the passage and ratification of this article make application to the Board of Agriculture of the State of North Carolina for certification and approval for the purpose of conducting a referendum among the growers or producers of such particular agricultural commodity, for commercial purposes, upon the question of levying an assessment under the provisions of this article, collecting and utilizing the same for the purposes stated in such referendum. (1947, c. 1018, s. 5.)

§ 106-555. Action by Board on application.—Upon the filing with the Board of Agriculture of such application on the part of any commission, council, board or other agency, the said Board of Agriculture shall within thirty days thereafter meet and consider such application; and if upon such consideration the said Board of Agriculture shall find that the commission, council, board or other agency making such application is fairly representative of and has been duly chosen and delegated as representative of the growers producing such commodity, and shall otherwise find and determine that such application is in conformity with the provisions of this article and the purposes herein stated, then and in such an event it shall be the duty of the Board of Agriculture to certify such commission, council, board or other agency as the duly delegated and authorized group or agency representative of the commercial growers and producers of such agricultural commodity, and shall likewise certify that such agency is duly authorized to conduct among the growers and producers of such commodity a referendum for the purposes herein stated. (1947, c. 1018, s. 6.)

§ 106-556. Conduct of referendum among growers and producers on question of assessments.—Upon being so certified by the said Board of Agriculture in the manner hereinbefore set forth, such commission, council, board or other agency shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of such particular agricultural commodity a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this article. Such referendum may be conducted either on a State-wide or area basis. (1947, c. 1018, s. 7.)

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.—With respect to any referendum conducted under the provisions of this article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least sixty days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this article shall exceed one-half of one per cent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. (1947, c. 1018, s. 8.)

§ 106-558. **Management of referendum; expenses.**—The arrangements for and management of any referendum conducted under the provisions of this article shall be under the direction of the commission, council, board or other agency duly certified and authorized to conduct the same, and any and all expenses in connection therewith shall be borne by such commission, council, board or other agency. (1947, c. 1018, s. 9.)

§ 106-559. **Basis of referendum; eligibility for participation; question submitted.**—Any referendum conducted under the provisions of this article may be held either on an area or State-wide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or State-wide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and share-croppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. (1947, c. 1018, s. 10.)

§ 106-560. **Effect of more than one-third vote against assessment.**—If in such referendum with respect to any agricultural commodity herein referred to more than one-third of the farmers and producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1947, c. 1018, s. 11.)

§ 106-561. **Effect of two-thirds vote for assessment.**—If in such referendum called under the provisions of this article two-thirds or more of the farmers or producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the agricultural commodity covered thereby, then such assessment shall be collected in the manner determined and announced by the agency conducting such referendum. (1947, c. 1018, s. 12.)

§ 106-562. **Regulations as to referendum; notice to farm organizations and county agents.**—The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least sixty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied—which assessment in any event shall not exceed one-half of one per cent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted—and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this article. (1947, c. 1018, s. 13.)

§ 106-563. **Distribution of ballots; arrangements for holding referendum; declaration of results.**—The duly certified agency of the producers of any agricultural product among whom a referendum shall be conducted under the provisions of this article shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated by said agency, arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten days thereafter the said agency shall canvass and publicly declare the result of such referendum. (1947, c. 1018, s. 14.)

§ 106-564. **Collection of assessments; custody and use of funds.**—In the event two-thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from State or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3.)

Editor's Note. — The 1951 amendment added the last sentence.

§ 106-565. **Subsequent referendum.**—In the event such referendum so to be conducted as herein provided shall not be supported by two-thirds or more of those eligible for participation therein and voting therein, then the duly certified agency conducting the said referendum shall have full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for three years. (1947, c. 1018, s. 16.)

§ 106-566. **Referendum as to continuance of assessments approved at prior referendum.**—In the event such referendum is carried by the votes of two-thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the three years set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years. (1947, c. 1018, s. 17.)

§ 106-567. **Rights of farmers dissatisfied with assessments; time for demanding refund.**—In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessment shall have been levied and collected under the provisions of this article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer. (1947, c. 1018, s. 18.)

§ 106-568. Publication of financial statement by treasurer of agency; bond required.—In the event of the levying and collection of assessments as herein provided, the treasurer of the agency conducting same shall within thirty days after the end of any calendar year in which such assessments are collected, publish through the medium of the press of the State a statement of the amount or amounts so received and collected by him under the provisions of this article. Before collecting and receiving such assessments, such treasurer shall give a bond in the amount of at least the estimated total of such assessments as will be collected, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency conducting such referendum and to be filed with the chairman or executive head of such agency. (1947, c. 1018, s. 19.)

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.1. Policy as to joint action of farmers.—It is declared to be in the public interest that North Carolina farmers producing agricultural products of all kinds, including cotton, tobacco, peanuts, soybeans, potatoes, vegetables, berries, fruits, livestock, livestock products, poultry and turkeys, and any other agricultural products having domestic and/or foreign markets, be permitted to act jointly in co-operation with each other in encouraging an expanding program of agricultural research and the dissemination of agricultural research findings. (1951, c. 827, s. 1.)

§ 106-568.2. Policy as to referendum and assessment.—It is further declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of five cents (5c) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts. (1951, c. 827, s. 2.)

§ 106-568.3. Action of Board of Agriculture on petition for referendum.—The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this article. (1951, c. 827, s. 3.)

§ 106-568.4. By whom referendum to be managed; announcement.—The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this article but shall, sixty days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as

authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. (1951, c. 827, s. 4.)

§ 106-568.5. When assessment shall and shall not be levied.—If in such referendum more than one-third of the farmers and producers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such event no assessment shall be levied or collected, but if two-thirds or more of such farmers and producers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment, then such assessment shall be collected in the manner hereinafter provided. (1951, c. 827, s. 5.)

§ 106-568.6. Determination and notice of date, area, hours, voting places, etc.—The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least sixty days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. (1951, c. 827, s. 6.)

§ 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.—The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within ten days after the date of such referendum, canvass and publicly declare the results thereof. (1951, c. 827, s. 7.)

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.—In the event two-thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of three (3) years under rules, regulations, and methods as provided for in this article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G. S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5c) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5c) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8.)

§ 106-568.9. **Refunds to farmers.**—In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within thirty days from the date of which said assessment is collected from such farmer or producer. (1951, c. 827, s. 9.)

§ 106-568.10. **Subsequent referenda; continuation of assessment.**—If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for three years. In the event the assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the three years set forth in the call for such referendum and a new referendum may be called and conducted during the third year of such period on the question of whether or not such assessment shall be continued for the next ensuing three years. (1951, c. 827, s. 10.)

§ 106-568.11. **Effect of more than one-third vote against assessment.**—If in such referendum called under the provisions of this article more than one-third of the farmers and producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1951, c. 827, s. 11.)

§ 106-568.12. **Effect of two-thirds vote in favor of assessment.**—If in such referendum called under the provisions of this article two-thirds or more of the farmers or producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the commodities covered thereby, then such assessment shall be collected in the manner prescribed herein (determined and announced by the agencies conducting such referendum). (1951, c. 827, s. 12.)

ARTICLE 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§ 106-569. **Definitions.**—When used in this article, unless the context or subject matter otherwise requires:

(a) The term or word "antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(b) The term "person", as used in this article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165.)

§ 106-570. Adulteration; what constitutes.—An antifreeze shall be deemed to be adulterated:

(1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.

(2) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

(3) If it consists of, or is compounded with calcium chloride, magnesium chloride, sodium chloride, petroleum distillates or other chemicals or substances in quantities harmful to the cooling systems of internal combustion engines. (1949, c. 1165.)

§ 106-571. Misbranding; what constitutes.—An antifreeze shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor; and an accurate statement of quantity of the contents in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package or container. (1949, c. 1165.)

§ 106-572. Inspection, analysis and permit for sale of antifreeze.—Before any antifreeze shall be sold, exposed for sale, or stored, packed or held with intent to sell within this State, a sample thereof must be inspected under the supervision of the State chemist in the Department of Agriculture, created by chapter 106 of the General Statutes. Upon application of the manufacturer, packer, seller or distributor and the payment of license or inspection fee of twenty-five dollars (\$25.00) for each brand or type of antifreeze submitted, the State chemist shall subject to inspection or analysis the antifreeze so submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the North Carolina State Board of Agriculture, established by chapter 106 of the General Statutes, and if the said antifreeze is not such a type or kind that is in violation of this article, the Commissioner of Agriculture shall give the applicant a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid, which license or permit shall be subject to renewal annually. If the Commissioner of Agriculture shall, at a later date, find that the antifreeze product or substance to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this article, the Commissioner of Agriculture shall notify the applicant and the license or permit shall be canceled forthwith. No license or permit for the sale of antifreeze in this State shall be issued until application has been made as provided by this article and such samples of the product as may be required by the State chemist to qualify it have been submitted and until the State chemist notifies the Commissioner of Agriculture that said antifreeze meets the requirement of this article. (1949, c. 1165.)

§ 106-573. Article to be administered by the Commissioner of Agriculture.—The Commissioner of Agriculture shall administer and enforce the provisions of this article by inspections, chemical analysis, or any other appropriate methods. All quantities or samples of antifreeze submitted for inspection or analysis shall be taken from stocks in this State or intended for sale in this State, or the Commissioner of Agriculture, through his agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such sample thereof for analysis. The Commissioner of Agriculture, through his agents or inspectors, shall have free access during business hours to all places of

business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and the Commissioner of Agriculture, acting through his agents, may open any box, carton, parcel, package or container holding or containing or supposed to contain any antifreeze and may take therefrom samples for analysis. If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture, acting through his authorized agents, inspectors or representatives, is hereby authorized to issue a "stop sale" order which shall prohibit further sale of any antifreeze being sold, exposed for sale or held with intent to sell within this State in violation of this article, until the law has been complied with or said violation has otherwise been legally disposed of. Any antifreeze not in compliance with the provisions of this article shall be subject to seizure upon complaint of the Commissioner of Agriculture or any of his agents, inspectors or representatives to a court of competent jurisdiction in the area in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this article, it may order the condemnation of said antifreeze, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State: Provided, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this article. In case any "stop sale" order shall be issued under the provisions of this article, the agents, inspectors or representatives of the Commissioner of Agriculture shall release the antifreeze so withdrawn from sale when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1949, c. 1165.)

§ 106-574. **Rules and regulations.**—The Board of Agriculture shall have authority to establish and promulgate such rules and regulations and standards as are necessary to promptly and efficiently enforce the provisions of this article. The Commissioner of Agriculture shall administer this article and shall execute all orders, rules and regulations established by the Board of Agriculture. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this article may, with like force and effect, be executed by such employees, agents, inspectors and representatives of the Commissioner of Agriculture as he may, from time to time, designate for such purpose. The Commissioner of Agriculture may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the State chemist during the fiscal year which have been found to be in accord with this article and for which a license or permit for sale has been issued, and it shall be lawful for any manufacturer, packer, seller, or distributor of antifreeze to show, by advertising, in any manner, that his or its brand of antifreeze has been inspected, analyzed and licensed for sale by the Commissioner of Agriculture, acting through the State chemist. It shall be unlawful for any manufacturer, packer, seller, or distributor of antifreeze to advertise, in any manner, that such antifreeze so advertised for sale has been approved by the Commissioner of Agriculture. (1949, c. 1165.)

§ 106-575. **Gasoline and oil inspectors may be designated as agents of the Commissioner.**—The Commissioner of Agriculture, with the approval of the Commissioner of Revenue, may designate any or all of the gasoline and oil inspectors appointed under article 3 of chapter 119 of the General Statutes as agents and representatives of the Commissioner of Agriculture for the purposes of administering and carrying out the duties imposed by this article. All or any gasoline and oil inspectors designated as agents of the Commissioner of Agriculture pursuant to this section shall have all of the power and authority that may be delegated to them by the Commissioner of Agriculture for the enforcement of this article; and when acting in the enforcement of this article, such gasoline and

oil inspectors shall be deemed to be agents and representatives of the Commissioner of Agriculture. (1949, c. 1165.)

§ 106-576. Submission of formula or chemical contents of antifreeze to the Commissioner.—When any manufacturer, packer, seller or distributor of antifreeze applies to the Commissioner of Agriculture for a license or permit to sell antifreeze in this State, the Commissioner of Agriculture may require such manufacturer, packer, seller, or distributor to furnish the State chemist a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Board of Agriculture: Provided, that the statement or formula or contents need not include the inhibitor ingredients if such inhibitor ingredients total less than five per cent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the State chemist with satisfactory evidence, other than by disclosure of the inhibitor ingredients, that the said antifreeze is in conformity with the provisions of § 106-570. All statements of contents, formulae or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the State chemist. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the person, firm, association or corporation owning and/or furnishing to the State chemist such statement of contents. (1949, c. 1165.)

§ 106-577. Penalties for violation.—Any person, firm, association or corporation violating or failing to comply with any of the provisions of this article, or any rule, regulation or standard issued pursuant thereto, shall be deemed guilty of a misdemeanor, and upon plea of guilty or conviction shall be punished in the discretion of the court, and each day that any violation of this article shall exist shall be deemed to be a separate offense. Whenever the Commissioner of Agriculture or his agents or representatives shall discover that any antifreeze is being sold or has been sold in violation of this article, the Commissioner of Agriculture or his agent or representative may furnish the facts to the solicitor or prosecuting officer of the court having jurisdiction in the area in which such violation occurred, and it shall be the duty of such prosecuting officer or solicitor to promptly institute proper legal proceedings. (1949, c. 1165.)

§ 106-578. Appropriation for enforcement of article.—All license or permit fees provided for in this article shall be collected by the Commissioner of Agriculture, deposited in the Department of Agriculture fund, of which the State Treasurer is custodian, and shall be expended for the administration and enforcement of this article. The Commissioner of Agriculture is hereby authorized to employ such number of agents, clerks and experts as may be necessary to administer and effectively enforce all of the provisions of this article. There shall, from time to time, be allotted by the Budget Bureau from the inspection fees collected under G. S. 119-18 such sums as may be necessary to administer and effectively enforce the provisions of this article. (1949, c. 1165.)

§ 106-579. Copy of analysis in evidence.—A copy of the analysis made by any chemist of the Department of Agriculture of antifreeze certified to by him shall be admitted as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this article. (1949, c. 1165.)

Chapter 107.

Agricultural Development Districts.

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107-2. Landowners' petition and deposits.	107-15. Filing and collection of assessment rolls; to be lien on land.
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§ 107-1. **Clerk's power to establish; public use.**—The clerk of the superior court (hereinafter called the "clerk" or "the court") of any county of the State of North Carolina shall have jurisdiction, power, and authority to establish agricultural development districts in his county for the purpose of clearing and putting in suitable condition for the beginning of cultivation good grades of lands, forested or cutover, suitable for agriculture, and it is hereby declared that the said development shall be considered a public benefit and conducive to the public welfare. (1917, c. 131, s. 1; C. S., s. 4959.)

§ 107-2. **Landowners' petition and deposits.**—Whenever a petition signed by all the landowners in a proposed agricultural development district shall be filed in the office of the clerk of the superior court of any county in which a part of said lands is located, setting forth and certifying that it is their desire and intention to form an agricultural development district (hereinafter called "the district") of an area aggregating not less than one thousand acres, and that it is their purpose, when cleared and put into condition for cultivation, to sell the said land to settlers on long time terms and at reasonable prices, they shall deposit with the clerk:

- a. A certified check for not less than one thousand dollars, plus ten cents per acre for each additional acre in the proposed district, from which funds the clerk shall from time to time meet the actual expenses of examining and verifying and other expenses incidental to forming the district.
- b. A complete map of the lands to be included in the district.
- c. A soil map showing the types of soils.
- d. A drainage map showing the natural drainage of the lands, and any proposed system of drainage it is intended to establish.
- e. Certificates of title by a reputable attorney of the county.
- f. An estimate of the cost of improvements under the plan submitted.
- g. A certificate that the lands when improved will have a market value of at least twice the amount of the total cost of the proposed improvement. (1917, c. 131, s. 2; C. S., s. 4960.)

§ 107-3. **Viewers' appointment.**—The clerk shall then appoint a board of viewers (hereinafter called "the viewers"), composed of three members, one a

competent civil engineer and the other two practical agriculturists, to examine the lands and data submitted to the clerk by the landowners, and report as to the facts being virtually as stated, or to give their opinion as to any variations. (1917, c. 131, s. 2; C. S., s. 4961.)

§ 107-4. Viewers' report.—Their written report shall be filed within two weeks from the date of their appointment. The clerk shall consider this report. If the viewers report that the project is not practicable or will not be for the public welfare, and the clerk shall approve such findings, the petition shall be dismissed at the cost of the petitioners. (1917, c. 131, s. 2; C. S., s. 4962.)

§ 107-5. Plan submitted to Department of Conservation and Development.—If the viewers report that the project is practicable, and that it will be for the public welfare and conducive to the general welfare of the community, and the court shall so find, then all of the data and reports of the proceedings shall be submitted to the Department of Conservation and Development, which shall designate:

1. An engineer to survey and approve of the boundaries and drainage and road plans.
2. An attorney of reputation to examine and approve of the chains of title submitted.
3. A forester to make an estimate of the cost of clearing.
4. A soil expert to report on the availability of the land for agricultural purposes. (1917, c. 131, s. 3; C. S., s. 4963.)

§ 107-6. District established, if Department approves.—The Department of Conservation and Development shall consider these reports, data, and plans, and, if it approves the same, shall so certify to the clerk of the court, who shall then declare the district established. (1917, c. 131, s. 3; C. S., s. 4964.)

§ 107-7. Board of Agricultural Development Commissioners appointed.—After the said district shall have been declared established as aforesaid, and the complete plans therefor approved, the clerk shall appoint two persons, one of whom shall be a landowner of the district, the other a practical agriculturist of good character, not a landowner of the district, and these two shall choose a third, who may or may not be a landowner of the district, and the three so appointed and chosen shall be designated as the Board of Agricultural Development Commissioners of District. (1917, c. 131, s. 4; C. S., s. 4965.)

§ 107-8. Commissioners incorporated; powers; officers; superintendent's bond.—Such commissioners when so appointed and chosen shall be immediately created a body corporate under the name and style of the Board of Agricultural Development Commissioners of District (hereinafter called "the commissioners" or "the board of commissioners"), with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and vice chairman. They shall also elect a secretary, within or without their body, and shall adopt bylaws for the government of their proceedings. The treasurer of the county in which the proceedings are instituted shall be ex officio treasurer of such board of commissioners. Such board of commissioners shall adopt a seal, which it may alter at pleasure. They shall have and possess such powers as are herein granted. The name of such district shall constitute a part of its corporate name. The commissioners shall appoint a competent person as superintendent of construction; such person shall furnish a bond, to be approved by the commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties. Such bond shall be in favor of the board of commissioners. In the event of any vacancy in the membership of the board of commissioners the remaining members shall fill

such vacancy, subject to the approval of the court. (1917, c. 131, s. 4; C. S., s. 4966.)

§ 107-9. Classification of lands according to benefits.—It shall be the further duty of the viewers to personally examine the lands in the district and classify them with reference to the benefits they will receive from the improvements to be made. The land benefits shall be separated into five classes. The land receiving the highest benefit shall be marked Class A; that receiving the next highest benefit, Class B; that receiving the next highest benefit, Class C; that receiving the next highest benefit, Class D; and that receiving the smallest benefit, Class E. The holdings of any one landowner need not necessarily be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined, and the total number of acres in each class in the entire district shall be ascertained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five cents per acre is assessed against the land in Class A, four cents per acre shall be assessed against the land in Class B, and three cents per acre in Class C, and two cents per acre in Class D, and one cent per acre in Class E. This shall form the basis of assessment for benefits to the lands of the district. (1917, c. 131, s. 5; C. S., s. 4967.)

§ 107-10. Appeal from viewers' report.—Any party aggrieved may, within ten days after the confirmation of the viewers' report, appeal to the superior court in termtime. Such an appeal shall be taken and prosecuted as now provided in special proceedings. Such an appeal shall be based and heard only upon such exceptions theretofore filed by the complaining party, either as to issue of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. (1917, c. 131, s. 6; C. S., s. 4968.)

§ 107-11. Letting contract for construction.—The commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein said district is located, and such additional publication elsewhere as they deem expedient, of time and place of letting the work of construction, and in such notice they shall specify the approximate amount of work to be done, the time fixed for the completion thereof, and the date appointed for the letting. They, together with the superintendent of the district, shall convene and let to the lowest responsible bidder, either as a whole or in part, or in sections, as they deem most advantageous for the district, the proposed work. The landowners may bid on the work, and in the event of their securing the contract, the work shall be done at actual cost, it being distinctly understood that the landowners are to receive no profit from said contract, and any saving effected shall inure to the benefit of the district. No bids shall be entertained that exceed the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. The commissioners shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by so doing. The successful bidder shall be required to enter into a contract with the board of commissioners, and to execute a bond for the faithful performance of such contract, with sufficient surety, in favor of the board of commissioners for the use and benefit of the district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract the superintendent of construction shall act only in an advisory capacity to the board of commissioners. The contract shall be based on the plans and specifications submitted by the commissioners in a report, and confirmed by the court, the original of which shall remain on file in the office of the clerk and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under authority of the commissioners, and on the

date therefor appointed for the opening of bids. All bids must be accompanied by a certified check for three per centum of the amount of the bid. (1917, c. 131, s. 7; C. S., s. 4969.)

§ 107-12. Payment for work done.—The superintendent of construction shall make monthly estimates of the amount of work done and shall furnish one copy to the contractor and file the other with the secretary of the board of commissioners, and the commissioners shall within five days after filing of such estimate meet and direct the secretary to draw a warrant in favor of the contractor for ninety per centum of the work done according to the specifications and contract; and upon the presentation of such, properly signed by the chairman or vice chairman and secretary, to the treasurer of the district, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent, he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the fund as before provided. In the event that the landowners receive the contract, the monthly payments shall cover only the actual cost of the work, as certified by the superintendent of construction, to whose certificates shall be attached all payrolls and vouchers. If any contractor to whom said work shall have been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the commissioners against such contractor and his bond in the superior court, for damages sustained in the district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1917, c. 131, s. 8; C. S., s. 4970.)

§ 107-13. Record book kept by clerk.—The clerk shall provide a suitable book to be known as the Record Book of the Agricultural Development Commissioners of District, in which he shall cause to be recorded every petition, motion, order, record, judgment, or finding of the board of commissioners in every transaction which may come before it, in such a way as to make a complete and continuous record of the case; copies of all the maps and plans are to be furnished by the commissioners, and marked by the clerk "Official Copy," which shall be kept on file by him in his office, and one of the copies shall be pasted or otherwise attached to his record. (1917, c. 131, s. 9; C. S., s. 4971.)

§ 107-14. Assessment rolls; preparation; contents; execution.—After the classification of the land and ratios of assessment of the different classes to be made thereon has been confirmed by the court, the commissioners shall ascertain the total cost of improvement, including all incidental expenses, and shall certify under the hand of the chairman and secretary of the board of commissioners to the clerk the said total cost, and said certificate shall be forthwith recorded in the record book and open to the inspection of any landowner in the district. The commissioners shall immediately prepare in duplicate the assessment rolls or agricultural improvement tax lists, giving therein the names of the owners of the land in the district as ascertained from the public records, a brief description of the several tracts of land assessed, and the assessment against each tract of land. The first of these assessment rolls shall provide assessments sufficient for the payment of interest on the bond issue to accrue the third year after their issue and the installment of principal to fall due at the expiration of the third year after the date of issue, together with such amounts as shall have to be paid for the collection and handling of the same. The second assessment roll shall make like provision for the fourth year, and in like manner assessment rolls shall make provision for each succeeding year during the life of the bonds. Each of the said assessment rolls shall specify the time when collectible, and shall be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of the assessment made by the viewers. These assessment rolls shall be signed by the clerk and by the secretary of the board of commissioners. (1917, c. 131, s. 10; C. S., s. 4972.)

§ 107-15. Filing and collection of assessment rolls; to be lien on land.—One copy of each of said assessment rolls shall be filed in the record book and one copy shall be delivered to the sheriff or other county tax collector, after the clerk has appended thereto an order directing the collection of said assessment, and the said assessment shall thereupon have the force and effect of a judgment as in the case of State and county taxes. These assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner, by the same officers, as the State and county taxes are collected. (1917, c. 131, s. 10; C. S., s. 4973.)

§ 107-16. When assessments due; sale of delinquent lands.—The said assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff to sell the land or lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door in the county in which the lands are located, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on the first Monday of February of each year; and if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the land may be readvertised and sold on the first Monday in March succeeding, during the same hours, without any order therefor. In all other respects, except as to the time of the sale of the land, the existing laws as to the collection of State and county taxes shall have application to the collection of assessments under this article. (1917, c. 131, s. 10; C. S., s. 4974.)

§ 107-17. Settlement by tax collector.—It shall be the duty of the sheriff or tax collector to pay over to the county treasurer promptly the moneys so collected by him upon said tax assessments, to the end that the said treasurer may have funds in hand to meet the payment of interest and principal due upon outstanding bonds as they mature. (1917, c. 131, s. 10; C. S., s. 4975.)

§ 107-18. Payment of interest and installments on bonds; county treasurer's liability.—It shall be the duty of the county treasurer, and without any previous order from the commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to said bonds, and also to pay the annual installments of principal due on said bonds at the time and place as evidenced by said bonds; and the said county treasurer shall be guilty of a misdemeanor and subject, on conviction, to fine and imprisonment, in the discretion of the court, if he shall neglect or fail to make prompt payment of said interest and principal of said bonds, and shall likewise be liable in a civil action for all damages which may accrue to the board of commissioners or holders of said bonds, to either or both of which a right of action is hereby given. (1917, c. 131, s. 10; C. S., s. 4976.)

§ 107-19. New assessment on sale of land.—When any land in the district is sold, as provided in § 107-16, the court shall assess the new owner thereof, and deduct the amount of the new assessment from the assessment of the former owner, and correct the assessment rolls accordingly. (1917, c. 131, s. 10; C. S., s. 4977.)

§ 107-20. Advertisement of intention to issue bonds.—The commissioners shall give notice for three weeks, by publication in some newspaper published in the county in which the district or a part of the district is situated, and shall also post a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of improvement, giving the amount of the bonds to be issued, the rate of interest they are to bear, and the time when payable. Any land-

owner in the district not wanting to pay interest on the bonds may within fifteen days after the publication of said notice pay to the county treasurer the full amount for which his land is liable, to be assessed from the classification sheet and certificate of the board of commissioners, showing the total cost of improvements, and have his lands released from liability to be assessed for such improvements. (1917, c. 131, s. 11; C. S., s. 4978.)

§ 107-21. **Landowner's waiver.**—Each and every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of the bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessment which may be levied for the payment of the bonds because of any irregularity or defect in the proceedings prior to this time, except in the case of an appeal as hereinbefore provided, which is not affected by this waiver. (1917, c. 131, s. 12; C. S., s. 4979.)

§ 107-22. **Bond issue.**—At the expiration of fifteen days after the expiration of the notice of the bond issue, the board of commissioners may issue bonds of the district for an amount equal to the total estimated cost of the improvements, less such amounts as shall have been paid in in cash to the county treasurer, plus an amount sufficient to pay interest on the bond issue for the three years next following the date of the issue: Provided, that the total principal amount of the bonds to be issued shall not exceed fifty dollars per acre for the land to be improved.

These bonds shall bear six per cent interest per annum, payable semiannually, and shall be paid in twenty equal installments. The first installment of the principal shall mature at the expiration of three years from the date of issue, and one installment for each succeeding year for nineteen additional years. The commissioners shall sell these bonds at not less than par and apply the proceeds to the payment of interest on said bonds for the three years next following the date of issue, and the payment of other expenses of the district provided for in this chapter. The proceeds from such bonds shall be for the exclusive use of the district specified on their face. The bonds shall be numbered by the board of commissioners and recorded in the record book, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinbefore provided. If any installment of principal or interest represented by said bonds shall not be paid at the time and in the manner when the same shall be due and payable, and such default shall continue for a period of six months, the holder or holders of such bond or bonds upon which default has been made shall have a right of action against said district, or the board of commissioners of said district, wherein the court may issue a writ of mandamus against said district, its officers, including the tax collector and treasurer, directing the levying of a tax or specific assessment as herein provided and the collection of the same in such sum as may be necessary to meet any unpaid installment of principal and interest and the cost of said action; and such other remedies are hereby vested in the holder or holders of such bond or bonds in default as may be authorized by law; and the right of action is hereby vested in the holder or holders of such bond or bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this chapter. The official bonds of the tax collector and the county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such official bonds may be increased by the board of county commissioners. (1917, c. 131, s. 13; C. S., s. 4980.)

§ 107-23. **Fees allowed sheriff and treasurer.**—The fee allowed the sheriff or the tax collector for collecting the tax as prescribed in this chapter shall be two per centum of the amount collected, and the fee allowed the county treas-

urer for disbursing the revenue obtained from the sale of the bonds shall be one per centum of the amount disbursed: Provided, no fee shall be allowed to the sheriff or other tax collector, or to the county treasurer, for collecting or receiving the revenue obtained from the sale of said bonds, nor for disbursing the revenue raised for paying off said bonds: Provided further, that in those counties where the sheriff, tax collector, and treasurer are on a salary basis, no fee whatever shall be allowed for collecting or disbursing the funds of the district. (1917, c. 131, s. 13, (2d); C. S., s. 4981.)

§ 107-24. Fees and expenses under chapter.—Any engineer employed under the provisions of this chapter shall receive such compensation for his services as shall be fixed and determined by the commissioners. The viewers, other than the engineer, shall receive five dollars per day; the rodman, axeman, chainman, and other laborers shall receive not to exceed two dollars per day. All other fees and costs incurred under the provisions of this chapter shall be the same as are usual for like services in other cases. Said costs and expenses shall be paid, by order of the court, out of the funds provided for that purpose, and the board of commissioners shall issue warrants therefor when funds shall be in the hands of the treasurer. Any engineer, viewer, superintendent of construction, or other person appointed under this chapter may be removed by the court, upon petition, for corruption, neglect of duty, or other good and satisfactory cause shown. (1917, c. 131, s. 14; C. S., s. 4982.)

§ 107-25. Liberal construction; defects in proceeding.—The provisions of this chapter shall be liberally construed to promote the objects herein declared and for the general welfare of the State. The collection of assessments shall not be defeated, whether proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the commissioners; but such orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person, or modify his assessment or liability, it shall in no manner affect the rights and legality of any other person than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this chapter shall exclude all other remedies. (1917, c. 131, s. 15; C. S., s. 4983.)

Chapter 108.

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- 108-80. Regulation of solicitation of public aid for charitable, etc., purposes.
 108-81. Application for license to solicit public aid.
 108-82. Issuance of license by State Board of Public Welfare.
 108-83. Solicitors and collectors must have evidence of authority and show same on request.
 108-84. Organizations, etc., exempted from article.
 108-85. Regulation and licensing of solicitation of alms for individual livelihood.
 108-86. Punishment for violation of article; misapplication of funds collected.
 108-87 to 108-90. [Omitted.]

ARTICLE 1.

State Board of Public Welfare.

§ 108-1. **Appointment, term of office, and compensation.**—There shall be appointed by the Governor seven members who shall be styled "The State Board of Public Welfare," and at least one of such persons shall be a woman. The terms of office of the members of the Board shall be six years. Upon the expiration of the terms of office of the present members of the Board, the Governor shall appoint their successors as follows: Three members to be appointed on April first, one thousand nine hundred and forty-three and every six years thereafter; two members to be appointed on April first, one thousand nine hundred and forty-five and every six years thereafter; and two members to be appointed on April first, one thousand nine hundred and forty-seven and

every six years thereafter. Any vacancy in the Board at present or which may hereafter arise from any cause whatsoever shall be filled for the residue of the term by appointment by the Governor. The Governor shall designate the chairman of the Board so selected, which chairmanship so designated may be changed as the Governor may deem best to promote the efficiency of the service. The members of the Board shall serve without pay, except that they shall receive their necessary expenses: Provided, however, that the chairman of the said Board, when acting as a member of the State Board of Allotments and Appeal shall receive a per diem to be fixed by the Director of the Budget, together with actual expenses incurred in attending meetings. (1868-9, c. 170, s. 1; Code, s. 2331; Rev., s. 3913; 1909, c. 500; 1917, c. 170, s. 1; C. S., s. 5004; 1937, c. 319, s. 1; 1943, c. 775, s. 1; 1945, c. 43, s. 1.)

Editor's Note. — Prior to the 1943 amendment the members of the State Board of Charities and Public Welfare were elected by the General Assembly. The 1945 amendment changed the name of

the Board to the State Board of Public Welfare, and s. 4 of the amendatory act changed the title of the chapter from "Board of Charities" to "Board of Public Welfare."

§ 108-1.1. Change of name in statutes and regulations relating to Board.—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the General Assembly, or in any rule or regulation, a duty or obligation is imposed upon the State Board of Charities and Public Welfare, or any authority, privilege or power is granted to the State Board of Charities and Public Welfare, the same shall be construed as referring to the State Board of Public Welfare. (1945, c. 43, s. 2.)

§ 108-2. Meetings of Board.—The Board shall hold meetings at least quarterly, and whenever called in session by the chairman, and shall make such rules and orders for the regulation of its own proceedings as it deems proper. (1868-9, c. 170, s. 2; Code, s. 2332; Rev., ss. 2807, 3914; 1909, c. 899; 1917, c. 170, s. 1; C. S., s. 5005.)

§ 108-3. Powers and duties of Board.—The Board shall have the following powers and duties, to-wit:

1. To investigate and supervise, through and by its own members or its agents or employees, the whole system of the charitable and penal institutions of the State, and to recommend such changes and additional provisions as it may deem needful for their economical and efficient administration.

2. To study the subjects of nonemployment, poverty, vagrancy, housing conditions, crime, public amusement, care and treatment of prisoners, divorce and wife desertion, the social evil and kindred subjects and their causes, treatment, and prevention, and the prevention of any hurtful social condition.

3. To study and promote the welfare of the dependent and delinquent child and to provide, either directly or through a bureau of the Board, for the placing and supervision of dependent, delinquent, and defective children.

4. To inspect and make report on private orphanages, institutions, maternity homes, and persons or organizations receiving and placing children, and to require such institutions to submit such annual reports and information as the State Board may determine: Provided, that the term "maternity homes" used hereinbefore in this subsection shall be construed to include institutions or homes maintained not only for the purpose of receiving pregnant women for care previous to, during and following delivery, but institutions or lying-in homes wherein pregnant women are received for care previous to and following delivery, the said delivery taking place in a hospital to which this statute does not apply.

5. To grant license for one year to such persons or agencies to carry on such work as it believes is needed and is for the public good, and is conducted by reputable persons or organizations, and to revoke such license when in its

opinion the public welfare or the good of the children therein is not being properly subserved; Provided, subsection five shall not apply to any orphanage chartered by the laws of the State of North Carolina, owned by a religious denomination or a fraternal order, and having a plant and assets not less than sixty thousand dollars (\$60,000), nor shall it apply to orphanages operated by fraternal orders, under charters of other states, which have complied with the corporation laws of North Carolina and have that amount of property.

6. To issue bulletins and have same printed and in other ways to inform the public as to social conditions and the proper treatment and remedies for social evils.

7. To issue subpoenas and compel attendance of witnesses, administer oaths, and to send for persons and papers whenever it deems it necessary in making the investigations provided for herein or in the other discharge of its duties, and to give such publicity to its investigations and findings as it may deem best for the public welfare.

8. To employ and fix the salary of, by and with the approval of the Governor, a trained investigator of social service problems who shall be known as the Commissioner of Public Welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties.

9. To recommend to the legislature social legislation and the creation of necessary institutions.

10. To have the authority to establish, maintain and provide rules and regulations for the administration of a system of personnel standards on a merit basis with a uniform schedule of compensation for all employees of the State Board and of the county welfare departments: Provided, that the compensation schedule for employees of the State Board shall be established in conformity with the provisions of the State Personnel Act.

11. To attend, either through its members or agents, social service conventions and similar conventions, and to assist in promoting all helpful publicity tending to improve social conditions of the State, and to pay out of the funds appropriated to the State Board office expenses, salaries of employees, and all other expenses incurred in carrying out the duties and powers hereinbefore set out.

12. To receive, hold and administer for the purposes for which it is organized, any funds donated to it, either by will or deed, and to administer said funds in accordance with the instructions of the will or deed creating them.

13. To accept donations and gifts or any and all kinds of commodities, services or moneys which may be donated or given by the federal or State government, or by any political subdivision of the State. Such donations shall be used exclusively by said Board for relief purposes in this State, and said Board is hereby fully authorized and empowered, under rules and regulations adopted by it, to provide for the distribution thereof.

14. To furnish to the federal government, or any of its agencies, such services as may be required in selecting, certifying, or referring persons who may be eligible for Civilian Conservation Corps, or persons who may be eligible for employment by the Work Projects Administration, the Resettlement Administration, the Surplus Commodities Corporation, or any other agency of the federal government engaged in relief or allied activities. The State Board of Charities and Public Welfare is also authorized to certify to the Surplus Commodities Corporation the persons eligible to receive such commodities as may be distributed for relief purposes.

15. To establish standards, provide rules and regulations for the operation of, and to inspect and license boarding homes, rest homes, or convalescent homes for persons who are aged or mentally or physically infirm and who are not related or connected by blood or marriage to the applicant for license when a charge is made for such care: Provided said homes care for two or more persons who obtain services from the county public welfare department or are supported in

whole or in part by public welfare funds. Such license shall be valid for one year from the date of issuance unless revoked earlier by the Board for cause. Such homes shall be under the supervision of the Board, and its agents may at any time visit and inspect the homes. Licensing authority shall not apply to any institution established, maintained or operated by any unit of government nor to commercial inns or hotels.

16. To make payments out of State moneys appropriated for the purpose and out of federal moneys available under the Federal Social Security Act, as amended, to pay the costs of necessary hospitalization in hospitals or health centers duly licensed by the Medical Care Commission of recipients of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, to the extent and in the manner determined from time to time to be feasible by the Board pursuant to rules, regulations and standards established by said Board: Provided, that the rules, regulations and standards established by the Board with respect to necessary hospitalization of recipients of old age assistance, aid to dependent children and aid to the permanently and totally disabled shall be consistent with the principle of obtaining maximum federal participation under the Federal Social Security Act, as amended. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; 1951, c. 1098, s. 2.)

Cross References.—See Const. Art. XI, § 7. For sections prescribing certain duties and powers of the Board and the Commissioner of Public Welfare, see the following: §§ 48-1 through 48-35 (duties relative to adoption of minors); § 153-9, subs. 29 (approval of establishment and maintenance of county homes for indigent and delinquent children); § 153-154 (reports required from county homes); § 153-166 (approval of facilities and equipment of district hospital homes for aged and infirm); § 35-40 (Commissioner is member of Board of Eugenics); § 15-206 (co-operation with State Probation Commission); § 108-18 (duties in administering Old Age Assistance Act); § 108-57 (duties in administering aid to dependent children); §§ 108-77 through 108-79 (administration of State Boarding Home Fund); §§ 108-80 through 108-86 (regulation of organizations and persons soliciting alms); § 110-29 (commitment of delinquent children to Board by juvenile courts); § 110-30 (approval of matron and superintendent of detention homes for children committed

by juvenile courts); § 110-31 (appointment and discharge of probation officers); § 110-33 (reports required of probation officers); § 110-49 (licensing of institutions for the care of children); §§ 110-50 through 110-56 (regulation of placement of children from without State); § 111-3 Commissioner ex officio member of State Commission for the Blind); § 115-303 (examination of mentally incapacitated school children); § 122-20 (inspection of hospitals for the insane and reports to General Assembly); § 148-50 (Commissioner is member of Advisory Board of Paroles); § 148-9 (supervision and visitation of State Prison.)

Editor's Note. — The 1931 amendment added the proviso to subsection 4, and the 1937 amendment inserted the words "by and with the approval of the Governor" in subsection 8. The 1941 amendment rewrote subsection 10, and the 1945 amendment added subsection 15. The first 1951 amendment inserted the words "and fix the salary of" in subsection 8, and the second 1951 amendment added subsection 16.

§ 108-4. Investigation and report on mental and physical infirmities.—The Board shall also give special attention to the causes of insanity, defect or loss of the several senses, idiocy, and the deformity and infirmity of the physical organization. They shall, besides their own observation, avail themselves of correspondence and exchange of facts of the labors of others in these departments, and thus be able to afford the General Assembly data to guide them in future legislation for the amelioration of the condition of the people, as well as to contribute to enlighten public opinion and direct it to interests so vital to the prosperity of the State. The State Board shall keep and report statistics of the matters hereinbefore referred to and shall compile these reports and analyze them with a view of

determining and removing the cause in order to prevent crime and distress. (1868-9, c. 170, s. 4; Code, s. 2334; Rev., s. 3916; 1917, c. 170, s. 1; C. S., s. 5007.)

§ 108-5. Inspection of county prisons; reports required.—The State Board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties and superintendents of public welfare and other county officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the State Board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the State Board. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008.)

§ 108-6. Biennial reports to General Assembly.—The State Board shall biennially prepare and submit to the General Assembly a complete and full report of its doings during the preceding two years, showing the actual condition of all the State institutions under its supervision, with such suggestions as it may deem necessary and pertinent, which shall be printed, and shall report such other matters as it may think for the benefit of the people of the State. (1868-9, c. 170, s. 8; 1870-1, c. 106; Code, c. 2338; Rev., s. 3918; 1917, c. 170, s. 1; C. S., s. 5009.)

§ 108-7. Attention secured for insane and other unfortunates.—Whenever the Board shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any almshouse or other place, whether such insane person is a public charge or otherwise, it shall be the duty of the Board to cause such insane person to be conveyed to the proper State hospital for the insane, there to receive the best medical attention. So, also, it shall be their care that all the unfortunate shall receive benefit from the charities of the State. (1868-9, c. 170, s. 6; Code, s. 2336; Rev., s. 3919; 1917, c. 170, s. 1; C. S., s. 5010.)

§ 108-8. Public institutions to furnish information.—The Board may require the superintendents or other officers of the several charitable and penal institutions of the State to report to them any matter relating to the inmates of such institutions, their manner of instruction and treatment, with structure of their buildings, and to furnish them any desired statistics upon demand. (1868-9, c. 170, s. 7; Code, s. 2337; Rev., s. 3920; 1917, c. 170, s. 1; C. S., s. 5011.)

§ 108-9. Relatives ineligible to appointment in State institutions.—No person shall be appointed to any place or position in any of the State institutions under the supervision of the State Board who is related by blood or marriage to any member of the State Board or to any of the principal officers, superintendents, or wardens of State institutions. (1917, c. 170, s. 1; C. S., s. 5012.)

§ 108-10. Failure of officers to furnish information.—If the board of commissioners of any county or the justices of the peace of any township, or any officer or employee of any charitable or penal institution of the State shall fail, refuse, or neglect to furnish any information required by law to be furnished to the State Board of Charities and Public Welfare, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the State, they shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013.)

ARTICLE 2.

County Boards of Public Welfare.

§ 108-11. County welfare boards; appointment; duties.—Each of the several counties of the State shall have a county welfare board composed of three members who shall be appointed as follows: The Board of county commissioners shall appoint one member who may be one of their own number to serve as ex officio member of the county welfare board with the same powers and duties as the other two members, or they may appoint a person not of their own number to serve on the county welfare board; the State Board of Charities and Public Welfare shall appoint one member; and the two members so appointed shall select the third member. In the event the two members thus appointed are unable to agree upon the selection of the third member, such third member shall be appointed by the resident judge of the superior court of the district in which the county is situated.

The respective appointments shall be made on or before the first day of April, one thousand nine hundred and forty-five and shall be effective as of that date. In order to secure overlapping terms of office and to give continuity of policy, the first appointment of the county commissioners shall be for a term of two years; the first appointment of the State Board of Public Welfare shall be for a term of three years; and the first appointment of the third member shall be for a term of one year; but at the expiration of the terms of the three appointees their successors shall be appointed for terms of three years each. Appointments to fill vacancies shall be for the remainder of the term of office. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible in the future to serve more than two successive terms.

The county welfare boards of the several counties shall have the duty of selecting the county superintendent of public welfare, shall act in advisory capacity to county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and with bettering social conditions generally, including co-operation with other agencies in placing indigent persons in gainful enterprises, shall prepare the administrative budget for the county welfare department for submission to and approval by the board of county commissioners, and shall have such other powers and duties as may be prescribed by law, particularly those set forth in the laws pertaining to old age assistance and aid to dependent children. The county welfare board shall meet with the superintendent of public welfare and advise with him in regard to problems pertaining to his office, and the superintendent of public welfare shall be the executive officer of the board and shall act as its secretary. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47.)

Local Modification. — Wake: 1941, c. 270, s. 2; Wilkes: 1939, c. 106.

rewrote the section, and the 1945 amendment rewrote the second paragraph.

Editor's Note. — The 1941 amendment

§ 108-12. Meetings of the board; compensation and expenses.—The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the State Board, and shall meet at least once a month with the superintendent of welfare and advise with him in regard to problems pertaining to his office. Members of county boards of public welfare may at the discretion of the board of county commissioners receive a per diem not to exceed five dollars (\$5.00) a day and actual expenses when attending

official meetings; any such payments heretofore made are hereby validated. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92.)

Local Modification. — Gaston: 1951, c. 694; Mecklenburg: 1941, c. 270, s. 3. rewrote the section, and the 1947 amendment rewrote the second sentence.

Editor's Note. — The 1941 amendment

§ 108-12.1. **Change of name in statutes and regulations relating to board.**—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the General Assembly, or in any rule or regulation, a duty or obligation is imposed upon a county welfare board or upon a county board of charities and public welfare, or any authority, privilege or power is granted thereto, the same shall be construed as referring to the county board of public welfare which shall henceforth be the designation of any of said county welfare boards or county boards of charities and public welfare. (1945, c. 43, s. 3.)

§ 108-13. **County superintendent of welfare; appointment; salary.**—On the first Monday in June, one thousand nine hundred and forty-one, or as soon thereafter as practical, the several county welfare boards shall appoint a superintendent of public welfare for the county in accordance with the rules and regulations of the merit system plan adopted by the State Board of Charities and Public Welfare. In making such appointment the county board may reappoint the superintendent of public welfare whose term expires on the thirtieth day of June one thousand nine hundred and forty-one and who was serving as superintendent of public welfare prior to the first day of January one thousand nine hundred and forty, if such person is certified by the merit system supervisor as having passed the merit system examination on a qualifying basis; or the county board may appoint as superintendent of public welfare any person who was employed by a county welfare department prior to the first day of January one thousand nine hundred and forty and who has been promoted to the duties and responsibilities of superintendent if such person meets the minimum requirements of the position of superintendent of public welfare and shall be certified by the merit system supervisor as having passed the merit system examination; or the county board may appoint as superintendent of public welfare a person from an open competitive or promotional register as certified by the merit system supervisor. The superintendent so appointed shall assume his duties on the first day of July, one thousand nine hundred and forty-one. All subsequent vacancies in the position of superintendent of public welfare shall be filled by the county board from an open competitive or promotional register.

The county welfare board may dismiss a superintendent of public welfare in accordance with the merit system rules of the State Board of Charities and Public Welfare and any superintendent so dismissed shall have the right of appeal to the merit system council, as provided for in the merit system plan.

The county welfare board shall determine the salary to be paid the superintendent of public welfare, in accordance with the merit system compensation plan, either at the time of his appointment or at such time as they may be in regular or called session for the purpose, and the salary shall be paid by the respective counties from federal, State and county funds: Provided that in counties where financial conditions render it urgently necessary, the State Board may cause to be paid out of any State or federal fund available for the purpose, such portion of the salary of the superintendent of welfare of any county as, in the discretion of the State Board, may be necessary. Levy of taxes for the special purpose of payment of the salary of the county welfare superintendent is hereby authorized and directed. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4;

C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4.)

Local Modification.—Mecklenburg: 1941, Act, see § 126-1 et seq.
c. 270, s. 4.

Editor's Note. — The 1941 amendment rewrote the section.

Cross Reference. — For Merit System

§ 108-14. Powers and duties of county welfare superintendent.—The county superintendent of public welfare shall have the following powers and duties:

1. To act as executive officer of county welfare board and to appoint office personnel in accordance with merit system regulations of the State Board of Charities and Public Welfare, whose salaries shall be paid by the county from federal, State and county funds: Provided, that in counties where financial conditions render it urgently necessary, the State Board may cause to be paid out of any State and federal funds available for the purpose such portion of the salaries as, in the discretion of the State Board may be necessary.

2. To administer old age assistance and aid to dependent children under the supervision of the State Board of Charities and Public Welfare and in accordance with the provisions of the Old Age Assistance and Aid to Dependent Children Acts.

3. To have the care and supervision of indigent persons in the county and to administer funds provided by the county commissioners for such purposes.

4. To act as agent for the State Board of Charities and Public Welfare in relation to any work to be done by the State Board in the county; and to make, under the direction of the State Board, such investigations in the county in the interest of social welfare as the State Board may desire or direct.

5. To issue employment certificates to children in such form and under such regulations as may be prescribed by the State Department of Labor.

6. To prepare and submit to the Eugenics Board of North Carolina petitions for sterilization of county institutional and noninstitutional cases and to arrange for operations authorized by the Eugenics Board.

7. To serve as investigating officer and chief probation officer for all juvenile courts in the county and to have oversight of dependent and delinquent children including those on parole or probation, of such dependent children as may be placed in the county by the State Board, and of those children conditionally released from State institutions for juvenile delinquents.

8. To assist and co-operate with the Commissioner of Paroles and the Parole Supervisor in the oversight and actual supervision of persons on parole in the county and to co-operate with the Probation Commission and its representatives.

9. Under direction of the State Board to look after and keep up with the condition of persons discharged from hospitals for the insane.

10. To investigate cases for adoption and supervise placements for adoption.

11. To supervise boarding homes under rules and regulations of the State Board.

12. To co-operate with existing agencies in the promotion of wholesome recreation facilities in the county. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5017; 1941, c. 270, s. 5.)

Editor's Note. — The 1941 amendment rewrote the section.

ARTICLE 3.

Division of Public Assistance.

§ 108-15. Division of Public Assistance created.—There is hereby created in the State Board of Charities and Public Welfare a Division of Public Assistance, including (a) assistance to aged needy persons, (b) aid to dependent

children, and (c) general assistance to other needy persons, as administered under authority of this article. (1937, c. 288, s. 1; 1949, c. 1038, s. 1.)

Editor's Note. — The 1949 amendment inserted subdivision (c).

§ 108-16. Director of Public Assistance.—The Commissioner of Welfare, with the advice and approval of the Governor, shall employ a whole-time executive to be known as "Director of Public Assistance." Such Director, under the authority and supervision of the Commissioner of Welfare, shall have charge of the administration of the Division herein created, and shall actively direct its affairs; and shall perform such other duties as may be required of him by the rules and regulations adopted by the State Board. He shall see that this article is properly administered, that the requirements thereof are carried out in a timely and orderly manner, that administration of this Division shall be kept at all times properly co-ordinated and efficiently maintained in agreement with other agencies of the State and with the federal government; and shall perform such other duties as are customary in his position.

The Director of Public Assistance shall receive such salary and compensation as may be fixed by the Director of the Budget; and his tenure of office shall be such as may be fixed by rules and regulations of the Department relative thereto and approved by the Governor, subject to termination when, in the opinion of the Governor and the Commissioner of Welfare, the public interest may demand it. (1937, c. 288, s. 2.)

Part 1. Old Age Assistance.

§ 108-17. Short title.—This title may be cited as the "Old Age Assistance Act." (1937, c. 288, s. 30.)

Cited in *Atlantic Coast Line R. Co. v. Co. v. Duplin County*, 226 N. C. 719, 40 Beaufort County, 224 N. C. 115, 29 S. E. S. E. (2d) 371 (1946). (2d) 201 (1944); *Atlantic Coast Line R.*

§ 108-18. Establishment of relief.—The care and relief of aged persons who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of State concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the State may equitably enjoy, and with due regard for other necessary objects of public expenditure, a State-wide system of old age relief is hereby established, to operate uniformly throughout the State and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the State, and each and every county thereof, and, whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county Commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of Old Age Assistance, as defined and provided for in this article. (1937, c. 288, s. 3.)

Editor's Note.—For article discussing social security, see 15 N. C. Law Rev. 369.

§ 108-19. Definitions.—As used in this article, "State Board" shall mean the State Board of Charities and Public Welfare, established by this chapter.

"The county board of welfare" shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modification as may be made by law.

"Applicant" shall mean any person who has applied for relief under this title.

"Recipient" shall mean any person who has received assistance under the provisions of this title.

"Assistance" as used under this title means the money payments to needy aged persons or payments for medical care in behalf of needy aged individuals.

"Deputies" and "supervisors" shall mean such persons as may be designated and appointed by the State Board to exercise its power and duty of supervision under this article.

"Social Security Board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law. (1937, c. 288, s. 4; 1939, c. 395, s. 1; 1951, c. 1098, s. 3.)

Editor's Note. — The 1939 amendment added the definition of "Social Security in behalf of needy aged individuals" to the Board." And the 1951 amendment added the definition of "Assistance".

§ 108-20. Acceptance of federal grants.—The provisions of the federal Social Security Act, relating to grants in aid to the State for old age assistance and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 5.)

§ 108-21. Eligibility.—Assistance shall be granted under this article to any person who:

(a) Is sixty-five years of age and over;

(c) Has not sufficient income, or other resources, to provide a reasonable subsistence compatible with decency and health;

(d) Is not an inmate of any public institution at the time of receiving assistance. An inmate of such institution may, however, make application for such assistance, but the assistance, if allowed, shall not begin until after he ceases to be an inmate.

(e) Has been a resident of this State for one year immediately preceding the date of his application.

Eligibility of applicants to receive benefits under this title, and the amount of assistance given, and such other conditions of award as it may be necessary to determine shall be determined in the manner hereinafter set out.

The amount of assistance which any person shall receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the State Board; and shall be sufficient when added to all other income and support of recipients to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding forty dollars (\$40.00) per month or four hundred eighty dollars (\$480.00) during one year; and of this not more than twenty dollars (\$20.00) per month nor more than two hundred forty dollars (\$240.00) in one year shall be paid out of State and county funds.

Within the limitations of the State appropriation the maximum payment for old age assistance may be increased not in excess of the amount which may hereafter be matched by the federal government. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1.)

Editor's Note. — The 1939, 1941 and 1943 amendments made changes in subsection (e).

The 1945 amendment repealed subsection (b), relating to United States citizenship, and increased the amounts specified in the next to last paragraph. The 1947

amendment struck out former subsection (e), relating to applicant's transfer of property to render himself eligible for assistance, and re-lettered former subsection (f) as subsection (e). It also added the last paragraph of the section.

§ 108-22. State Old Age Assistance Fund.—A fund shall be created to be known as "The State Old Age Assistance Fund." This Fund shall be created

by appropriations made by the State from its ordinary revenues and such grants as may be made for old age assistance under the federal Social Security Act. Said Fund shall be used exclusively for the relief of aged persons coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the State for such purpose shall be supplemented by the amount provided under the federal Social Security Act for old age assistance and such further amount as the State may appropriate for the administration of this article. From said Fund there shall be paid as hereinafter provided three-fourths of the benefit payments to aged persons in accordance with the provisions hereof, and the other one-fourth of said payments shall, subject to the provisions of § 108-73, be provided by the several counties of the State as hereinafter required.

In the event that the federal Social Security Act is amended providing for a larger percentage of contributions to said Fund, the provisions of this section shall be construed to accept such additional grants, and the percentages to be provided for old age assistance by the State and counties shall be adjusted proportionately. (1937, c. 288, s. 7; 1943, c. 505, s. 1; 1947, c. 91, s. 2.)

Editor's Note. — The 1943 amendment substituted "108-73" for "108-74" near the end of the first paragraph. It also struck out the former provision which read as follows: "The cost of administering the provisions of this title shall be, in part, paid from said fund in accordance with §

108-39."

The 1947 amendment added the second paragraph.

Cited in Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

§ 108-23. State appropriation.—At its present session, and biennially thereafter, the General Assembly shall appropriate out of its ordinary revenues, for the use of such Fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the aged persons coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the State to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 8.)

§ 108-24. County fund.—Annually, at the time other taxes are levied in each of the several counties of the State, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the State and federal funds available for expenditure in said county for old age assistance. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 9.)

§ 108-25. Appropriations not to lapse.—No appropriation made for the purposes of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article; Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer with the approval of the State Board of Allotments and Appeal a portion of the amount raised by the county for old age assistance to the county aid to dependent children fund. (1937, c. 288, s. 10; 1945, c. 615, s. 1.)

Editor's Note. — The 1945 amendment added the proviso.

§ 108-26. Custody and receipt of funds.—The Treasurer of the State of North Carolina is hereby made ex officio Treasurer of the State Old Age Assistance Fund herein established, including therein such grants in aid for old age assistance as may be received from the federal government for administration and

distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the "State Old Age Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other State funds. The said Fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 11.)

§ 108-27. **Department of Charities and Public Welfare.**—The powers and duties of the State Board of Charities and Public Welfare, established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of Commissioner of Welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the State Board of Charities and Public Welfare, through the Commissioner of Welfare as the executive head of the Department, is hereby empowered to organize the Department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire Department shall be coordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 12.)

§ 108-28. **Certain powers and duties of State Board of Charities and Public Welfare.**—The State Board shall:

(a) Supervise the administration of assistance to the needy aged under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the State Board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(d) Co-operate with the federal government in matters of mutual concern pertaining to assistance to the needy aged, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(e) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish reports as may be necessary;

(g) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, nonresidents or transients, and co-operate with other agencies of the State and federal governments in providing such assistance and services and in the study of the problems involved;

(h) The State Board is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the State Treasurer and credited to the account of the North Carolina State Board of Charities and Public Welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 13; 1939, c. 395, s. 1; 1943, c. 505, s. 2.)

Editor's Note. — The 1939 amendment added subsections (g) and (h). words "an annual report and such interim" formerly appearing after the word "Publish" in subsection (f).

The 1943 amendment struck out the

§ 108-29. **Certain powers and duties of local boards; county welfare boards.**—The county boards of welfare shall perform the duties herein required

of them with relation to the administration of this article in the several counties, under the supervision and direction of the State Board, and in accordance with the rules and regulations prescribed by said State Board.

The county boards of welfare shall:

(a) Report to the State Board at such times and in such manner and form as the State Board may from time to time direct;

(b) Submit to the State Board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the State Board. Make and report to the State Board and to the county board of commissioners such investigation as may be required in order that said State Board and boards of county commissioners may be fully informed as to the assistance required by aged persons coming within the eligibility provisions of this article, and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the State Board under authority thereof. (1937. c. 288, s. 14.)

§ 108-30. Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the State Board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the State Board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of applications as may be necessary. The application shall contain a statement of the amount of property, both real and personal, in which the applicant has an interest, and of all income which he may have at the time of filing the application, and shall contain such other information as may be required by the rules and regulations of the State Board. One copy of the application shall be forwarded to the State Board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the applicant, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the State Board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed forty dollars (\$40.00) per month or four hundred eighty dollars (\$480.00) in one year, and there shall not be paid thereupon out of State and county funds more than twenty dollars (\$20.00) per month or more than two hundred forty dollars (\$240.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds. Within the limitations of the State appropriation the maximum payment for old age as-

sistance may be increased not in excess of the amount which may hereafter be matched by the federal government.*

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application or granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the State Board of Allotments and Appeal. The State Board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of old age assistance and in accordance with the rules and regulations of the State Board for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving old age assistance, directly or indirectly derived from the records, papers, files, or communications of the State Board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 15; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3.)

Editor's Note. — Prior to the 1939 amendment the application was required to be verified by the oath of the applicant. The 1941 amendment rewrote the

last paragraph. The 1945 amendment increased the amounts specified in the third paragraph; and the 1947 amendment added the last sentence thereto.

§ 108-30.1. Lien on real property.—There is hereby created a general lien, enforceable as hereinafter provided, upon the real property of any person who is receiving or who has received old age assistance, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1951. Before any application for old age assistance is approved under the provisions of this article, the applicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Any time after the approval of an old age assistance grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket and shall be cross-indexed showing the name of the county filing said statement as claimant and the name of the recipient as owner. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of old age assistance paid to such recipient from and after October 1, 1951. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten years from the last day for which assistance is paid nor more than one year after the death of any recipient: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient.

The State Board of Public Welfare shall furnish to the county superintendent of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said Board.

Each county department of public welfare shall notify all persons shown of record to be recipients of old age assistance as of the date of notice that all old age assistance grants paid from and after October 1, 1951, shall constitute a lien against the real property and a claim against the estate of each recipient. The

notice may be given by letter mailed to the last known address of each recipient, but the failure to give such notice shall not affect the validity of the lien. (1951, c. 1019, s. 1.)

§ 108-30.2. Claim against estate.—Within one year after the death of any person who has received old age assistance, reimbursement for which has not been made, the county attorney of the county by or through which such assistance was last paid to such person shall file a claim against his estate. The claim shall be for the total amount of old age assistance paid to or for the benefit of such recipient from and after October 1, 1951, by or through the State and the several counties thereof; and said claim shall have equal priority in order of payment with the Sixth class under § 28-105 of the General Statutes: Provided, that no such claim shall be satisfied out of any real property in which the recipient had any legal or equitable interest so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient. (1951, c. 1019, s. 1.)

§ 108-30.3. Funds recovered.—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of this article, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid old age assistance to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county old age assistance fund and a report of such deposit made to the State Board of Public Welfare. All sums to which the United States or the State of North Carolina may become entitled under the provisions of this article shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Old Age Assistance Fund and shall become a part of that fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled: Provided, that neither the United States nor the State shall in any instance be chargeable for cost in excess of the sum received by it from the claim.

The county welfare department shall within 60 days after the death of the person receiving such assistance notify the county attorney of the death of such person. (1951, c. 1019, s. 1.)

§ 108-31. Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deems that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the State Board of Allotments and Appeal. (1937, c. 288, s. 16.)

§ 108-32. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an old age assistance recipient during or after the first day of the month for which a grant was previously authorized by the county welfare board, any old age assistance check or checks payable to such

recipient, not endorsed prior to such recipient's death, shall be endorsed by the clerk of the superior court of the county on which the check was drawn and the proceeds thereof paid to the spouse of the deceased recipient. If there is no living spouse, the proceeds of such check or checks shall be applied to the funeral expenses of such deceased recipient. (1937, c. 288, s. 17; 1945, c. 615, s. 1.)

Editor's Note. — The 1945 amendment added the second paragraph.

§ 108-33. State Board of Allotments and Appeal.—For the purpose of making allotment of State and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, there shall be created within the State Board of Charities and Public Welfare and as an agency of said Board, subject to its supervision and control by rules and regulations adopted by it, a body to be known as "The State Board of Allotments and Appeal," consisting of three members as follows:

- The chairman of the State Board of Charities and Public Welfare;
- The Commissioner of Welfare;

The Director of Public Assistance, established by this article; all of whom shall be ex officio members of the State Board of Allotments and Appeal. The chairman of the State Board of Charities and Public Welfare shall be the chairman of the Board of Allotments and Appeal.

If an application is not acted upon by the county welfare board within a reasonable time, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the Board of Allotments and Appeal in the manner and form prescribed by the said Board of Allotments and Appeal. The Board of Allotments and Appeal shall, upon receipt of such an appeal, give the applicant or recipient, the board of county commissioners and the county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the Board upon such evidence as may be pertinent or proper; and the Board of Allotments and Appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare or the board of county commissioners, as in the judgment of the Board of Allotments and Appeal may be just and proper.

Upon any appeal from the board of county commissioners or county board of welfare, it shall be the duty of such board to forward to the Board of Allotments and Appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners or county board of welfare, and such papers and documents or other matter as may be required under the rules of the State Board of Allotments and Appeal, or under its order in the particular matter.

When the State Board of Allotments and Appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and county board of welfare. The decision of the State Board of Allotments and Appeal shall be final.

The State Board of Allotments and Appeal may also, on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare, and may consider any application upon which a decision has not been made within thirty days. The State Board of Allotments and Appeal may make such additional investigation as it may deem necessary in all cases, and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the State Board of Allotments and Appeal shall, upon request, be given reason-

able notice and opportunity for a fair hearing by the State Board of Allotments and Appeal. All decisions of the State Board of Allotments and Appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and county board of welfare.

The State Board may authorize hearings of appeals in any county by other representatives selected by said board, subject to final determination by the State Board of Allotments and Appeal. (1937, c. 288, s. 18; 1939, c. 395, s. 1.)

Editor's Note. — The 1939 amendment paragraph, the words "a reasonable time" substituted, near the beginning of the fifth for "thirty days".

§ 108-34. Periodic reconsideration and changes in amount of assistance. — All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the State Board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning old age assistance and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient, and a copy of such notice shall be sent to the State Board and board of county commissioners. Such action on the part of the county board shall be subject to review by the State Board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the State Board of Allotments and Appeal as in cases of original awards. (1937, c. 288, s. 19.)

§ 108-35. Removal to another county.—Any recipient who moves to another county in this State shall be entitled to receive assistance in the county to which he has moved, and the county welfare superintendent of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare superintendent of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, not in excess of amount paid before removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 20; 1943, c. 505, s. 3.)

Editor's Note. — The 1943 amendment substituting the words "county welfare superintendent" for the former words referring to the board of county commissioners. It also struck out the former second paragraph.

§ 108-36. Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning aged persons in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the State Board of Allotments and Appeal may require. Such reports shall be made on forms furnished by the State Board, or in compliance with the rules and regulations of said State Board. A copy thereof shall be immediately forwarded to the State Board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of

commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purposes of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, annually, on or before the first day of May, make a report to the State Board of Allotments and Appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the Board of Allotments and Appeal may require. (1937, c. 288, s. 21.)

§ 108-37. Allocation of funds.—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the State Board of Allotments and Appeal shall proceed to ascertain and determine the amount of State and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The Board shall, at the same time, determine the amount to be raised in each of the respective counties by taxation to supplement the State and federal funds allotted to such county. The allotment of State and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the Board of Allotments and Appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for both payments of grants to recipients and for administrative purposes: Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent, or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. (1937, c. 288, s. 22; 1939, c. 395, s. 1; 1943, c. 505, s. 4.)

Editor's Note. — The 1939 amendment changed the last sentence, and the 1943 amendment added the proviso thereto.

§ 108-38. Administration expenses.—The State Board of Allotments and Appeal shall annually allocate to the several counties of the State, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the State Board of Allotments and Appeal upon budgets submitted to said Board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the State Board of Allotments

and Appeal from the appropriation made by the State for aid to county welfare administration. The balance of said county administrative expenses shall be paid by the respective counties. The State Board of Allotments and Appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county superintendent of welfare and the State Board of Charities and Public Welfare. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note. — The 1939 amendment added the last paragraph of this section, and the 1941 amendment struck out the former first paragraph. The 1945 amendment substituted in the second sentence of the first paragraph the words "of the

public welfare program", for the words "of this article", and rewrote the first two sentences of the second paragraph.

Cited in Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

§ 108-39. Transfer of State and federal funds to the counties.—The State Old Age Assistance Fund shall be drawn out on the warrant of the State Auditor, issued upon order of the State Board, evidenced by the signature of the Commissioner of Welfare. Quarterly, and oftener, if in the sound judgment of the State Board it may be necessary, the State Board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds, for a reasonable period. Before transferring said funds the State Board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of State funds to be so transferred. The State Board of Allotments and Appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county old age assistance fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the State Board may require such additional protection to such funds as they may deem proper.

When in the judgment of the State Board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the State Board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the State Board may demand and require that the funds raised by taxation in any county be transmitted to the Treasurer of the State, subject to disbursement under such rules and regulations as the State Board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately

transfer all of such funds and pay over the same to the State Treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 24.)

§ 108-40. **Accounts and reports from county officers.**—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the State Board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the State Board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the State Board and its authorized auditors, supervisors and deputies. (1937, c. 288, s. 25.)

§ 108-41. **Further powers and duties of State Board.**—The State Board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 26.)

§ 108-42. **Fraudulent acts made misdemeanor.**—Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled; and whoever aids or abets in buying or in any way disposing of the property, either real or personal, of a recipient of assistance with the intent to defeat the purposes of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 27.)

§ 108-43. **Limitations of article.**—All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 28.)

Part 2. Aid to Dependent Children.

§ 108-44. **Short title.**—This title may be cited as the "Aid to Dependent Children Act." (1937, c. 288, s. 60.)

Cited in Atlantic Coast Line R. Co. v. Co. v. Duplin County, 226 N. C. 719, 40 S. Beaufort County, 224 N. C. 115, 29 S. E. E. (2d) 371 (1946).
(2d) 201 (1944); Atlantic Coast Line R.

§ 108-45. **Establishment of relief.**—The care and relief of dependent children who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of State concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the State may equitably enjoy, and with due regard for other necessary objects of public expenditure, a State-wide system of aid to dependent children is hereby established, to operate uniformly throughout the State and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient

of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the State, and each and every county thereof, and whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of aid to dependent children as defined and provided for in this article. (1937, c. 288, s. 31.)

§ 108-46. Definitions.—As used in this article, “State Board” shall mean the State Board of Charities and Public Welfare, established by this chapter.

“The county board of welfare” shall mean the county board of charities and public welfare of each of the several counties, as now established by law, subject to such modifications as may be made by law.

“Applicant” shall mean any person who has applied for relief for dependent children under this title.

“Recipient” shall mean any person who has received assistance for dependent children under the provisions of this title.

“Assistance” as used under this title means the money payments for any month with respect to or payments for medical care in behalf of a dependent child or dependent children and the needy relative with whom any dependent child or dependent children live if the money payments have been made with respect to such child or children for such month.

“Social Security Board” shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law. (1937, c. 288, s. 32; 1939, c. 395, s. 1; 1951, c. 1098, s. 4.)

Editor’s Note. — The 1939 amendment 1951 amendment rewrote the definition of defined “Social Security Board,” and the “assistance”.

§ 108-47. Acceptance of federal grants.—The provisions of the federal Social Security Act, relating to grants in aid to the State for aid to dependent children, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 33.)

§ 108-48. Amount of relief.—The maximum amount to be allowed per month under this article shall not exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00), except in extraordinary circumstances in which it appears to the satisfaction of the State Board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purpose above set forth. Provided further, that within the limitations of the State appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. (1937, c. 288, s. 34; 1945, c. 615, s. 1.)

Editor’s Note. — The 1945 amendment added the second proviso.

§ 108-49. Dependent children defined.—The term “dependent child” as used in this article shall mean a child under eighteen years of age who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great-grandfather, grandmother-in-law, great-grandmother, brother of the half-blood, brother-in-law, adoptive brother, sister of the half-blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home; who has resided in the State of North Carolina for

one year immediately preceding the application for aid; or who was born within the State within one year immediately preceding the application if the mother has resided in the State for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note. — The 1941 amendment made this section applicable to school children under eighteen, and added to the list of relatives beginning with "adoptive father."

The 1945 amendment substituted the words "under eighteen years of age",

near the beginning of the section, for the words "under sixteen years of age, or under eighteen years of age if regularly attending school". The amendment also struck out a former provision, as changed by the 1939 amendment, relating to making every effort to apprehend the parent.

§ 108-50: Repealed by Session Laws 1945, c. 615, s. 2.

§ 108-51. **State Aid to Dependent Children Fund.** — A fund shall be created to be known as "The State Aid to Dependent Children Fund." This Fund shall be created by appropriations made by the State from its ordinary revenues and such grants as may be made for aid to dependent children under the federal Social Security Act. Said Fund shall be used exclusively for the relief of dependent children coming within the eligibility provisions of this title and the cost of administration of the same. The appropriations to be made by the State for such purpose shall be supplemented by the amount provided under the federal Social Security Act for aid to dependent children and such further amount as the State may appropriate for the administration of this article. From said Fund there shall be paid as hereinafter provided three-fourths of the benefit payments to dependent children in accordance with the provisions hereof, the other one-fourth of said payments shall, subject to the provisions of § 108-73, be provided by the several counties of the State as hereinafter required.

In the event that the federal Social Security Act is amended by providing for a larger percentage of contributions to said Fund, the provisions herein made shall be construed to accept such additional grants, and the amounts to be provided for aid to dependent children by State and counties shall be adjusted proportionately. (1937, c. 288, s. 37; 1941, c. 232; 1943, c. 505, s. 5.)

Editor's Note. — The 1941 amendment substituted in the last sentence of the first paragraph "three-fourths" for "two-thirds" and "one-fourth" for "one-third."

The 1943 amendment substituted "§ 108-73" for "§ 108-74" in the last sentence of the first paragraph. It also struck out a former provision of the paragraph which

read: "The cost of administering the provisions of this title shall be, in part, paid from said funds in accordance with § 108-68."

Cited in Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

§ 108-52. **State appropriation.** — At its present session, and biennially thereafter, the General Assembly shall appropriate out of its ordinary revenues, for the use of such Fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the dependent children coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the State to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 38.)

§ 108-53. **County fund.** — Annually, at the time other taxes are levied in each of the several counties of the State, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the State and federal funds available for expenditure in said county for aid to dependent children. The amount so ascertained shall

be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 39.)

§ 108-54. Appropriations not to lapse.—No appropriation made for the purpose of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer with the approval of the State Board of Allotments and Appeal a portion of the amount raised by the county for aid to dependent children to the county old age assistance fund. (1937, c. 288, s. 40; 1945, c. 615, s. 1.)

Editor's Note. — The 1945 amendment added the proviso.

§ 108-55. Custody and receipt of funds.—The Treasurer of the State of North Carolina is hereby made ex officio treasurer of the State Aid to Dependent Children Fund herein established, including therein such grants in aid to dependent children as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the State Aid to Dependent Children Fund, and shall be responsible therefor on his official bond; and the said Funds shall be protected by proper depository security as other State funds. The said Fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 41.)

§ 108-56. General powers and duties of Department of Charities and Public Welfare.—The powers and duties of the State Board of Charities and Public Welfare established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of Commissioner of Welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the State Board of Charities and Public Welfare, through the Commissioner of Welfare as the executive head of the Department, is hereby empowered to organize the Department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire Department shall be co-ordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 42.)

§ 108-57. Certain powers and duties of State Board of Charities and Public Welfare.—The State Board shall:

(a) Supervise the administration of assistance to dependent children under this article by the county boards;

(b) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the State Board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(c) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(d) Co-operate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(e) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provi-

sions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(f) Publish reports as may be necessary;

(g) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, nonresidents or transients, and co-operate with other agencies of the State and federal governments in providing such assistance and services and in the study of the problems involved.

(h) The North Carolina State Board of Charities and Public Welfare is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the State Treasurer and credited to the account of the North Carolina State Board of Charities and Public Welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 43; 1939, c. 395, s. 1; 1943, c. 505, s. 6.)

Editor's Note. — The 1939 amendment added subsections (g) and (h). The 1943 amendment struck out the words "an annual report and such interim" formerly appearing after the word "Publish" in subsection (f).

§ 108-58. Certain powers and duties of local boards; county welfare boards.—The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the State Board, and in accordance with the rules and regulations prescribed by said State Board.

County boards of welfare shall:

(a) Report to the State Board at such times and in such manner and form as the State Board may from time to time direct;

(b) Submit to the State Board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the State Board. Make and report to the State Board and to the county board of commissioners such investigation as may be required in order that the said State Board and boards of county commissioners may be fully informed as to the assistance required by dependent children coming within the eligibility provisions of this article; and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(c) Perform any other duties required of them under this article or by proper rules and regulations made by the State Board under authority thereof. (1937, c. 288, s. 44.)

§ 108-59. Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the State Board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the State Board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of the applications as may be necessary. One copy of the application shall be forwarded to the State Board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the children for whom application is made, in order to ascertain the

facts supporting the application, and in order to obtain such other information as may be required by the rules of the State Board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation, and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars (\$18.00) for one child and twelve dollars (\$12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars (\$65.00) except in extraordinary circumstances in which it appears to the satisfaction of the State Board that a total of sixty-five dollars (\$65.00) per month would be insufficient to secure the purposes above set forth: Provided further, that within the limitations of the State appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the State Board of Allotments and Appeal.

The State Board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of aid to dependent children and in accordance with the rules and regulations of the State Board for any person or persons to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving aid to dependent children, directly or indirectly derived from the records, papers, files, or communications of the State Board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note. — Prior to the 1939 amendment the application was required to be verified by the oath of the applicant. The 1941 amendment added the last paragraph. And the 1945 amendment inserted

the second proviso in the third paragraph.

It seems probable that the legislature intended the word "for" in line two of the fourth paragraph to read "or".

§ 108-60. Action by county commissioners.—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deem that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the State Board of Allotments and Appeal. (1937, c. 288, s. 46.)

§ 108-61. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attach-

ment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 47.)

§ 108-62. State Board of Allotments and Appeal.—For the purpose of making allotment of State and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, the State Board of Allotments and Appeal, created under § 108-33 shall as an agency of the State Board have complete and final jurisdiction. If an application is not acted upon by the county welfare board within thirty days or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the Board of Allotments and Appeal in the manner and form prescribed by the said Board of Allotments and Appeal. The Board of Allotments and Appeal shall, upon receipt of such an appeal, give the applicant or recipient and the board of county commissioners and county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the board upon such evidence as may be pertinent or proper; and the Board of Allotments and Appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare and the board of county commissioners, as in the judgment of the Board of Allotments and Appeal may be just and proper.

Upon any appeal from the board of county commissioners, it shall be the duty of such board to forward to the State Board of Allotments and Appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners, and such papers and documents or other matter as may be required under the rules of the Board of Allotments and Appeal, or under its order in the particular matter.

When the State Board of Allotments and Appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and the county board of welfare. The decision of the State Board of Allotments and Appeal shall be final.

The State Board of Allotments and Appeal may also on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare and may consider any application upon which a decision has not been made within thirty days. The State Board of Allotments and Appeal may make such additional investigation as it may deem necessary in all cases and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the State Board of Allotments and Appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the Board of Allotments and Appeal. All decisions of the State Board of Allotments and Appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and the county board of welfare.

The State Board may authorize hearings of appeals in any county by other representatives selected by said boards, subject to final determination by the State Board of Allotments and Appeal. (1937, c. 288, s. 48.)

§ 108-63. Periodic reconsideration and changes in amount of assistance.—All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the State Board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning aid to dependent children and the propriety and necessity of the continuance thereof to recipients and as to such

changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient and a copy of such notice shall be sent to the State Board and board of county commissioners. Such action on the part of the county board shall be subject to review by the State Board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the State Board of Allotments and Appeal as in cases of original awards. (1937, c. 288, s. 49.)

§ 108-64. Removal to another county.—Any resident who moves to another county and continues to have such dependent children in custody in this State shall be entitled to receive assistance in the county to which he has moved, and the county welfare superintendent of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare superintendent of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 50; 1943, c. 505, s. 7.)

Editor's Note. — The 1943 amendment transferring to the board of county commissioners the words "county welfare superintendent" for the former words re- and paragraph.

§ 108-65. Procedure preliminary to allotments and county taxation; investigation and report.—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning dependent children in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the State Board of Allotments and Appeal may require. Such reports shall be made on forms furnished by the State Board or in compliance with the rules and regulations of said State Board. A copy thereof shall be immediately forwarded to the State Board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purpose of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, on or before the first day of May, make a report to the State Board of Allotments and Appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the Board of Allotments and Appeal may require. (1937, c. 288, s. 51; 1943, c. 505, s. 8.)

Editor's Note. — The 1943 amendment substituted "May" for "April" in the second sentence of the second paragraph.

§ 108-66. Allocation of funds.—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the State Board of Allotments and Appeal shall proceed to ascertain and determine the amount of State and federal funds available for dis-

bursement in the counties for the purposes of this article for the next ensuing fiscal year. The Board shall, at the same time, determine the amounts to be raised in each of the respective counties by taxation to supplement the State and federal funds allotted to such county. The allotment of State and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the Board of Allotments and Appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for both payments of grants to recipients and for administrative purposes:

Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. (1937, c. 288, s. 52; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1.)

Editor's Note. — The 1939 amendment changed the last sentence of the section. The 1941 amendment substituted the words "three times" for "twice" in the last sentence of the first paragraph. And the 1945 amendment added the proviso at the end of the section.

§ 108-67. Administration expenses.—The State Board of Allotments and Appeal shall annually allocate to the several counties of the State the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the State Board of Allotments and Appeal upon budgets submitted to said Board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the State Board of Allotments and Appeal from the appropriation made by the State for aid to county administration. The balance of said county administrative expenses shall be paid by the respective counties. The State Board of Allotments and Appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice, it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payments of such part of such county's administrative expenses. (1937, c. 288, s. 53; 1941, c. 232; 1943, c. 505, s. 9; 1945, c. 615, s. 1.)

Editor's Note. — The 1941 amendment struck out the former first paragraph of this section. It also substituted the words "aid to dependent children" for the words "old age assistance" as appearing in the original act. However, this correction had already been made in the section as codified. The 1943 amendment struck out the words "in accordance with the total

amount of benefit payments to be paid in each county for aid to dependent children therein," formerly appearing after the word "State" in line three of the first paragraph.

The 1945 amendment substituted in the first paragraph the words "the public wel-

fare program" for the words "this article," and rewrote the first two sentences of the second paragraph.

Cited in *Atlantic Coast Line R. Co. v. Duplin County*, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

§ 108-68. Transfer of State and federal funds to the counties.—The aid to dependent children fund shall be drawn out on the warrant of the State Auditor, issued upon order of the State Board, evidenced by the signature of the Commissioner of Welfare. Quarterly, and oftener, if in the sound judgment of the State Board it may be necessary, the State Board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds for a reasonable period. Before transferring said funds the State Board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of State funds to be so transferred. The State Board of Allotments and Appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one-fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county aid to dependent children fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the State Board may require such additional protection to such funds as they may deem proper.

When in the judgment of the State Board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the State Board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the State Board may demand and require that the funds raised by taxation in any county be transmitted to the Treasurer of the State, subject to disbursement under such rules and regulations as the State Board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the State Treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 54; 1937, c. 405; 1943, c. 505, s. 10.)

Editor's Note. — The 1943 amendment substituted "one-fourth" for "one-third" in the next to last sentence of the first paragraph.

§ 108-69. Accounts and reports from county officers.—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the State Board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the State Board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the State Board and its authorized auditors, supervisors, and deputies. (1937, c. 288, s. 55.)

§ 108-70. Further powers and duties of State Board.—The State Board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 56.)

§ 108-71. Fraudulent acts made misdemeanor.—Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain by means of willfully false statement or representation or by impersonation, or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is justly entitled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 57.)

§ 108-72. Limitations of article.—All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 58.)

§ 108-73. Equalizing fund.—The State Board of Allotments and Appeal is authorized and directed to set apart and reserve out of the appropriation authorized to be made by the State under § 108-23, relating to old age assistance, and under § 108-52, relating to aid to dependent children, such an amount of said funds appropriated by the State to the respective funds as shall be found by the State Board of Allotments and Appeal to be necessary for the purpose of equalizing the burden of taxation in the several counties of the State, and the benefits received by the recipients of awards under this article, and such amount shall be expended and disbursed solely for the use and benefit of needy aged persons and dependent children coming within the eligibility provisions of this article. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the State Board of Allotments and Appeal, producing, as far as practicable, a just and fair distribution thereof: Provided, however, that no county shall be entitled to share in such equalizing fund unless the rate of tax necessary to be levied in such county for the purposes of this article is in excess of ten cents on the one hundred dollar valuation of taxable property therein: Provided further, the State Board of Allotments and Appeal shall not allot to any county from such equalizing fund more than three-fourths of the cost to such county in excess of the amount produced in such county by a levy and collection of a tax rate of ten cents on the one hundred dollar valuation of taxable property therein.

After determining the amount to be allotted to any county from such equalizing fund, the State Board of Allotments and Appeal shall determine the amount to be raised in such county by taxation to supplement the State and federal funds allotted to said county as in this article otherwise provided, and it shall be mandatory upon the boards of county commissioners in the several counties to annually levy taxes in accordance therewith. (1937, c. 288, s. 62; 1943, c. 505, s. 11.)

Editor's Note. — The 1943 amendment referred to in the first sentence which had called for a change in the second number already been made upon codification.

Part 3. General Assistance.

§ 108-73.1. Establishment of relief.—The care and relief of all persons

who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of State concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to State and county revenues and with due regard for other necessary objects of public expenditure, a State-wide system of general assistance is hereby established, to operate with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such assistance. (1949, c. 1038, s. 2.)

§ 108-73.2. Acceptance of federal grants in aid; part liberally construed.—The State Board of Public Welfare is hereby authorized to accept any grants in aid for general assistance which may be made available to the State by the federal government and the provisions of Part 3 of this article shall be liberally construed in order that the State and its needy citizens may benefit fully from such grants in aid. (1949, c. 1038, s. 2.)

§ 108-73.3. Assistance defined.—Assistance as herein used means money payments to a needy individual or payments for medical care in behalf of such needy individual. (1949, c. 1038, s. 2; 1951, c. 1098, s. 5.)

Editor's Note. — The 1951 amendment rewrote this section.

§ 108-73.4. Eligibility.—Assistance may be granted to any person who:

- (a) Is unable to earn a sufficient income and is without any resources to provide a subsistence compatible with decency and health; and
- (b) Is not an inmate of any public institution at the time of receiving assistance.

Applications for general assistance shall be made to the county superintendent of public welfare who by and with the approval of the county welfare board shall determine whether aid is to be granted and the amount thereof.

The amount of assistance which any eligible person may receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations of the State Board of Public Welfare. Insofar as funds will permit, such assistance shall be sufficient when added to all other income and resources to provide such person with a reasonable subsistence compatible with decency and health, but the principle of equitable treatment shall be followed in each county as provided in the rules and regulations of the State Board of Public Welfare. Assistance may be granted to any person or for any purpose coming within the provisions of this section and the rules and regulations of the State Board of Public Welfare not inconsistent herewith, although such person or purpose may not come within federal requirements governing the use of federal grants in aid for general assistance purposes. Applications for general assistance shall be handled in the manner prescribed by the rules and regulations of the said Board. (1949, c. 1038, s. 2.)

§ 108-73.5. State General Assistance Fund.—A fund shall be created to be known as the "State General Assistance Fund." This Fund shall be created by appropriations made by the General Assembly and such grants as may be received from the federal government for this purpose. Such Fund shall be used exclusively for assistance to needy persons found to be eligible in accordance with the provisions of Part 3 of this article and the rules and regulations of the State Board of Public Welfare not inconsistent therewith.

The Treasurer of the State of North Carolina is hereby made ex officio Treasurer of the State General Assistance Fund herein established, including

therein such grants in aid for general assistance as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants in aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the "State General Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other State funds. The said funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the superintendent of public welfare, countersigned by the county auditor, for both payments of grants to recipients and for administrative purposes: Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent, the signature of the chairman of the county welfare board together with that of the county auditor shall be sufficient for the disbursement of such funds. (1949, c. 1038, s. 2.)

§ 108-73.6. Allotment and transfer of federal and State funds to the counties.—Allotments shall be made annually by the State Board of Allotments and Appeal, created by § 108-33, in the manner prescribed in §§ 108-36 and 108-37: Provided, that no participating county shall receive from the State General Assistance Fund during any fiscal year less than ten per cent (10%) or more than fifty per cent (50%) of the total expenditures for general assistance as herein defined until such time as federal grants in aid for general assistance are available to the State.

When federal funds are available to North Carolina for general assistance, the State Board of Allotments and Appeal shall allot annually to each county from the State General Assistance Fund any proportion of the total amount to be expended for such purpose that the amount of federal and State funds available will permit: Provided that no county shall receive from such federal and State funds during any fiscal year more than ninety per cent (90%) of the total expenditures for general assistance.

It is the purpose of the General Assembly that the allotments herein provided for shall be used by the counties entitled thereto solely as supplementary funds to increase the general assistance being provided, and no allotment shall be used, directly or indirectly, to replace county appropriations or expenditures.

State and federal funds shall be transferred to the counties as prescribed in § 108-39 of the General Statutes of North Carolina and all provisions of that section shall apply to general assistance funds, except that all funds so transferred shall be deposited in the county general assistance fund. (1949, c. 1038, s. 2.)

§ 108-73.7. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law. (1949, c. 1038, s. 2.)

§ 108-73.8. Accounts and reports from county officers.—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the State Board of Public Welfare in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the State Board of Public Welfare as often as may be deemed necessary. The accounts shall at all times be open to inspection by the State Board of Public Welfare and its authorized auditors, supervisors and deputies. (1949, c. 1038, s. 2.)

§ 108-73.9. Further powers and duties of State Board.—The provi-

sions of § 108-28 shall apply to Part 3 of this article. The State Board of Public Welfare is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling and disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1949, c. 1038, s. 2.)

§ 108-73.10. Participation permissive; effect of federal grants.—The general assistance program herein established shall be administered as provided for in the rules and regulations of the State Board of Public Welfare, except that no county shall be granted any allotment from the State General Assistance Fund nor shall be subject to provisions of Part 3 of this article unless its consent be given in the manner prescribed by the rules and regulations of the State Board of Public Welfare: Provided, that in the event federal general assistance grants shall be made available to the State upon condition that each county thereof participate in the general assistance program, then and in that event all of the provisions of Part 3 of this article shall apply to and become mandatory upon every county. (1949, c. 1038, s. 2.)

General Provisions.

§ 108-74. Organization; appointment of agencies; employment.—The State Board shall have opportunity to set up such organization as may in its judgment be deemed proper to secure the economic and efficient administration of this article, not inconsistent with other provisions hereof. It may delegate such powers as may be lawfully delegated to such persons and agencies as will expedite the prompt execution of the duties of the Board in ministerial matters; may appoint auditors, accountants, supervisors, and deputies, and other agents to aid it in its supervisory powers and to secure the proper care of the funds and administration of the law; and may employ clerical and other assistance. Except as herein otherwise provided, the salaries and compensation paid to the personnel shall be fixed by the Budget Commission, and the number of salaried persons and employees shall be subject to the approval of the Budget Commission. The organization shall likewise be such as to meet the approval of the Federal Social Security Authority in charge of the old age assistance.

The Board is further authorized to pay ordinary expenses incident to administration, and to fix and pay per diem compensation to members of boards to whom new duties have been given and of whom additional service is required under this article. Such compensation shall be subject to the approval of the Director of the Budget. (1937, c. 288, s. 63.)

§ 108-75. County funds; how provided.—Wherever in this article provisions are made requiring the several counties to annually levy or annually levy and collect taxes to provide for such amounts as such counties are required to pay for old age assistance, or for aid to dependent children, or for the cost of administration, such provisions shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1937, c. 288, s. 63½.)

§ 108-76. Termination of federal aid.—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become or be in force unless and until the Governor

of the State of North Carolina has issued a proclamation, duly attested by the Secretary of State of the State of North Carolina, to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the State funds on hand shall be converted into the general fund of the State for such use as may be authorized by the Director of the Budget, and the county funds accumulated by the provisions of this article in the respective counties of the State shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 288, s. 63½-A.)

ARTICLE 4.

Home Boarding Fund.

§ 108-77. State Boarding Home Fund created.—The General Assembly of North Carolina shall make appropriations to the State Board of Charities and Public Welfare for the purpose of providing aid for needy and dependent children and paying their necessary subsistence in boarding homes. The State Board of Charities and Public Welfare, from said appropriations, shall maintain a fund to be known and designated as the State Boarding Home Fund, from which said Fund there shall be paid, in accordance with the rules and regulations adopted by the State Board of Charities and Public Welfare, the amount necessary to provide homes for the needy and dependent children coming within the eligibility provisions of this article. (1937, c. 135, s. 1.)

§ 108-78. No benefits to children otherwise provided for.—No needy or dependent child shall be eligible for the benefits provided in this article if such child is eligible for benefits provided by Part 2 of article 3 entitled "Aid to Dependent Children." (1937, c. 135, s. 2.)

§ 108-79. Administration of Fund by State Board of Charities and Public Welfare.—From the Fund so provided, the State Board of Charities and Public Welfare may provide for payment of the necessary costs of keeping needy and dependent children in suitable boarding homes, including the children committed to the State Board of Charities and Public Welfare under the provisions of § 110-29, provided such children so committed to such State Board of Charities and Public Welfare are ineligible for assistance under the "Aid to Dependent Children Act" hereinbefore referred to. Said Fund shall be expended under the rules and regulations adopted by the State Board of Charities and Public Welfare. (1937, c. 135, s. 3.)

ARTICLE 4A.

State Boarding Fund for the Aged and Infirm.

§ 108-79.1. State Boarding Fund established.—The State Board of Public Welfare is hereby authorized, empowered, and directed to establish a fund to be known as the State Boarding Fund for the aged and infirm, and to adopt rules and regulations under which payments are to be made out of the Fund in accordance with the provisions of this article. (1951, c. 90.)

§ 108-79.2. Payments.—From the Fund herein established, the State Board of Public Welfare may pay all or part of the cost of maintaining in a duly licensed boarding home any aged or infirm adult person (a) when the State deems it essential to the health or welfare of such person that such boarding home care be provided; and (b) when such person is otherwise eligible to receive public assistance under the old age assistance program, aid to the permanently and totally disabled program, or the general assistance program; and (c) when the total resources of such person, including any public assistance grants, are not sufficient to provide care in a suitable licensed boarding home. (1951, c. 90.)

§ 108-79.3. Benefits may be in addition to other aid.—Payments may be made from the Fund to or for the benefit of a person whether or not such person receives assistance from the State or county, but no payment shall be made from the Fund for any purpose except for necessary costs of domiciliary care in a licensed home. (1951, c. 90.)

ARTICLE 5.

Regulation of Organizations and Individuals Soliciting Public Alms.

§ 108-80. Regulation of solicitation of public aid for charitable, etc., purposes.—Except as hereinafter provided in G. S. 108-84, no person, organization, corporation, institution, association, agency or co-partnership except in accordance with provisions of this article shall solicit the public whether by mail, or through agents or representatives or other means for donations, gifts or subscriptions of money and/or of gifts of goods, wares, merchandise or other things of value or to sell or offer for sale or distribute to the public any thing or object whatever to raise money or to sell memberships, periodicals, books or advertising space or to secure or attempt to secure money or donations or other property by promoting any public bazaar, sale, entertainment or exhibition or by any similar means for any charitable, benevolent, health, educational, religious, patriotic or other similar public cause or for the purpose of relieving suffering of animals unless the solicitation is authorized by and the money or other goods or property is to be given to an organization, corporation, institution, association, agency or co-partnership holding a valid license for such purpose from the State Board of Public Welfare, issued as herein provided. (1939, c. 144, s. 1; 1947, c. 572.)

Editor's Note.—The 1947 amendment For comment on the former enactment, rewrote former §§ 108-80 to 108-90 to appear as present §§ 108-80 to 108-86. see 17 N. C. Law Rev. 333.

§ 108-81. Application for license to solicit public aid.—Any person, organization, corporation, institution, association, agency, or co-partnership wishing to secure a license from the State Board of Public Welfare for the purpose of soliciting the public for any of the aforementioned causes shall file a written application with the State Board of Public Welfare on a form furnished by the said Board setting forth proof of the worthiness of the cause, chartered responsibility, the existence of an adequate and responsible governing board to administer receipts and disbursements of funds, goods, or other property sought, the need of public solicitation, proposed use of funds sought, and a verified report of the operation of such organization, corporation, institution, association, agency or co-partnership for a fiscal period determined by the said State Board, said verified report to show reserve funds and endowment funds as well as receipts and disbursements. (1939, c. 144, s. 1; 1947, c. 572.)

§ 108-82. Issuance of license by State Board of Public Welfare.—If the State Board of Public Welfare after full investigation and careful study of the purpose and functioning of an organization, corporation, institution, association, agency, or co-partnership filing an application for a license to solicit deems such organization, corporation, institution, association, agency or co-partnership a proper one and not inimical to the public welfare and its proposed solicitations to be truly for the purpose set forth in its application and provided for in this article, it shall issue to such organization, corporation, institution, association, agency or co-partnership a license to solicit for its purposes and program for a period not to exceed one year, unless revoked for cause.

The State Board of Public Welfare shall not issue a license to solicit to any such organization, corporation, institution, association, agency or co-partnership which pays or agrees to pay to any individual, corporation, co-partnership or

association an unreasonable or exorbitant amount of the funds collected as compensation.

In the event the said Board refuses to issue said license, the organization, corporation, institution, association, agency or co-partnership shall be entitled to a hearing before said Board provided written request therefor is made within fifteen days after notice of refusal is delivered or mailed to the applicant. All such hearings shall be held in the offices of said Board and shall be open to the public. Decisions of said Board shall be mailed to the interested parties within ten days after the hearing.

The State Board of Public Welfare before granting or refusing a license as herein provided shall call upon the State Commission for the Blind, the division of Vocational Rehabilitation and other divisions of the State Department of Public Instruction, the Bureau of Labor for the Deaf, and the State Board of Health for advice in any situation or cause in which any of the several State agencies named has an interest or responsibility. (1939, c. 144, s. 1; 1947, c. 572.)

§ 108-83. Solicitors and collectors must have evidence of authority and show same on request.—No person shall solicit or collect any contribution in money or other property for any of the purposes set forth in this article without a written authorization, pledge card, receipt form, or other evidence of authority to solicit for a duly licensed organization, corporation, institution, association, agency, or co-partnership for which the donation or contribution is made and said evidence of authority must be shown to any person on request. Said evidence of authority must be provided by the organization, corporation, institution, association, agency or co-partnership for which the donation or contribution is solicited or by the agency through which the donation or contribution is collected and distributed. (1939, c. 144, s. 2; 1947, c. 572.)

§ 108-84. Organizations, etc., exempted from article.—The provisions of this article shall not apply to any solicitation or appeal made by any church, or religious organization, school or college, fraternal or patriotic organization, or civic club located in this State when such appeal or solicitation is confined to its membership nor shall the provisions of this article apply to any locally indigenous organization, institution, association or agency having its own office, managing board, committee or trustees or chief executive offices located in or residing in a city or county from publicly soliciting donations or contributions within a city and the county or counties in which said city is located or within the county in which such an organization, institution, association or agency is located and operates; provided that nothing in this article shall apply to any solicitation or appeal by any church for the construction, upkeep, or maintenance of the church and its established organization or for the support of its clergy. (1939, c. 144, s. 2a; 1947, c. 572.)

§ 108-85. Regulation and licensing of solicitation of alms for individual livelihood.—It shall be unlawful for an individual to engage in the business of soliciting alms or begging charity for his or her own livelihood or for the livelihood of another individual upon the streets or highways of this State or through door to door solicitations without first securing a license to solicit for this purpose from the State Board of Public Welfare.

Any individual desiring to engage in the business of soliciting alms or begging charity for his or her own livelihood or for the livelihood of another individual as set forth in the first paragraph of this section shall file a written application for a license on a form or forms furnished by the said Board, setting forth his or her own true name and address, his or her correct address or addresses for the past five years, the purpose for which he or she desires to solicit alms, the reason why public solicitation is considered a necessary means to obtain a livelihood or relief from suffering rather than the pursuit of a legitimate trade or the acceptance of

benefits provided through the social security measures and funds administered by the federal, State and county governments and any other information which the said Board may deem necessary to carry out the provisions of this article. A copy of the license must be carried by the solicitor while soliciting and must be shown upon request.

The carrying and offering for sale of merchandise by the individual soliciting alms or begging charity shall not exempt the individual so soliciting from the provisions of this article. The State Board of Public Welfare shall call upon the several State agencies named in § 108-82 for advice in issuing a license to an individual in accordance with the provisions of this article. (1947, c. 572.)

§ 108-86. Punishment for violation of article; misapplication of funds collected.—Any person who, or any organization, corporation, institution, association, agency or co-partnership which violates any of the provisions of this article or solicits donations and contributions from the public without first applying for and obtaining a license as herein provided shall be guilty of a misdemeanor, and upon conviction shall be punished in case of an organization, corporation, institution, association, agency or co-partnership by a fine of not more than one thousand dollars (\$1,000.00); in the case of an individual the punishment shall be that provided for a misdemeanor.

Any person who, or organization, corporation, institution, association, agency or co-partnership which, after having conducted a solicitation campaign and obtained funds from such solicitation shall willfully convert or misapply any of said funds from the purposes for which solicited as set out in the application for license to solicit shall be guilty of a felony and shall be punished in the discretion of the Court. (1939, c. 144, s. 3; 1947, c. 572.)

§§ 108-87 to 108-90: Omitted by Session Laws 1947, c. 572.

Editor's Note.—In rewriting this article the 1947 act omitted §§ 108-87 through 108-90, which probably amounts to an implied repeal of these sections. Sections 108-84 and 108-86 now cover the subject

matter of the omitted sections with the exception of § 108-89, which repealed §§ 14-336 through 14-338 so far as in direct conflict with the article.

Chapter 109.

Bonds.

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Official Bonds.

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ARTICLE 1.

Official Bonds.

§ 109-1. **Irregularities not to invalidate.** — When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the State for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment,

or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the State for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (1842, c. 61; R. C., c. 78, s. 9; 1869-70, c. 169, s. 16; Code, s. 1891; Rev., s. 279; C. S., s. 324.)

In General.—This section does not have the effect of introducing into an official bond provisions which are not, but ought to have been inserted in the conditions, so as to extend the liabilities of the obligors; but the purpose is to cure certain defects and irregularities in conferring the office and accepting the instrument, and to maintain its validity as an official undertaking, as far as it goes, notwithstanding the penalty or condition may vary from those prescribed by law. *State v. Pool*, 27 N. C. 105 (1844); *State v. McMinn*, 29 N. C. 344 (1847); *State v. Jones*, 29 N. C. 359 (1847); *Commissioners v. Mangin*, 86 N. C. 286 (1882). See also, *Midgett v. Nelson*, 214 N. C. 396, 199 S. E. 393 (1938).

For article concerning contracts and referring generally to this section, see 13 N. C. Law Rev. 65, 76.

Retroactive Operation. — The section had a retroactive operation. *State v. Pool*, 27 N. C. 105 (1844); *State v. Jones*, 29 N. C. 359 (1847).

Official bonds should be liberally construed and any variance in the condition of such an instrument from the provisions prescribed by the law will usually be treated as an irregularity, in view of this section, but this principle does not abrogate the freedom of contract. *Washington v. Trust Co.*, 205 N. C. 382, 171 S. E. 438 (1933).

Nor does this rule preclude the parties from contracting in the bond for liability for a shorter period than the official term of office of the principal. *Washington v. Trust Co.*, 205 N. C. 382, 171 S. E. 438 (1933).

Validity as Common-Law or Voluntary Bonds. — A statutory bond, not duly executed, or not conditioned as required by statute, may be sustained as a common-law or voluntary bond. *Chambers v. Witherpoon*, 10 N. C. 42 (1824); *Justices v. Armstrong*, 14 N. C. 284 (1831); *Justice v. Dozier*, 14 N. C. 287 (1831); *Williams v. Ehringhaus*, 14 N. C. 297 (1831); *Vanhook v. Barnett*, 15 N. C. 268 (1833); *Davis v. Somerville*, 15 N. C. 382 (1834); *State v. McAlpin*, 26 N. C. 140 (1843); *Reid v. Humphreys*, 52 N. C. 258 (1859).

County A. B. C. Board as Oblige.—The naming of county A. B. C. board as obligee in bond, rather than State, works no limitation of its character as official bond and affords no escape from its obligations as such. *Jordan v. Harris*, 225 N. C. 763, 36 S. E. (2d) 270 (1945).

Name of Constable Omitted. — Where a constable's official bond was signed by the obligors but a blank was left for the name of the constable, the omission was not cured by this section. *Grier v. Hill*, 51 N. C. 572 (1859).

Failure to Register Constable's Bond.—An irregularity, such as want of registration, will not, under this section, invalidate a constable's bond. *Warren v. Boyd*, 120 N. C. 56, 26 S. E. 700 (1897).

Failure to Name Conditions in Sheriff's Bond.—Failure to name conditions required by section 162-8, relating to sheriff's bonds, will not, under this section, invalidate the bond given. *Commissioners v. Sutton*, 120 N. C. 298, 26 S. E. 920 (1897).

Mistake in Name of Ward in Guardian's Bond.—Where, in the order of a county court appointing a guardian, the name Margaret is by mistake inserted as that of the ward instead of Miranda, a bond taken according to the proper requisitions, with the right name recited, will, under the operation of this section, be sustained as an official bond. *Shuster v. Perkins*, 46 N. C. 325 (1854).

No Penalty Named in Guardian's Bond.—Where defendants signed a bond intending to make it the guardian bond of their principal, but there was no penalty named in the bond the same being filled in subsequent to the signatures, it was held that this section does not apply, as it is confined to bonds wherein the amount of penalty varies from that fixed by law, being either more or less than the amount. *Rollins v. Ebbs*, 137 N. C. 355, 49 S. E. 341 (1904); *Rollins v. Ebbs*, 138 N. C. 140, 50 S. E. 577 (1905).

Who May Sue. — The chairman of a board of fence commissioners, although not named in the tax collector's bond, may bring suit on the same under this section, when the latter fails to pay the money

collected for the erection of fences. *Speight v. Staton*, 104 N. C. 44, 10 S. E. 86 (1889).

Where a register of deeds issued a license for the marriage of a girl under eighteen without the consent of her father,

the father is the person injured within the meaning of this section. *Joyner v. Roberts*, 112 N. C. 111, 16 S. E. 917 (1893).

Cited in *Barnes v. Lewis*, 73 N. C. 138 (1875).

§ 109-2. Penalty for officer acting without bond.—Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the State for each attempt so to exercise his office. (R. C., c. 78, s. 8; Code, s. 1882; Rev., s. 278; C. S., s. 325.)

Stated in *Moffitt v. Davis*, 205 N. C. 565, 172 S. E. 317 (1934).

§ 109-3. Condition and terms of official bonds.—Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 326.)

Stated in *Moffitt v. Davis*, 205 N. C. 565, 172 S. E. 317 (1934).

§ 109-4. When county may pay premiums on bonds.—In all cases where the officers or any of them named in § 109-3 are required to give a bond, and the said officer or officers are paid by a set or fixed salary, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. (1937, c. 440.)

Local Modification.—Currituck: 1943, c. 269.

§ 109-5. Annual examination of bonds; security strengthened.—The bonds of the officers named in § 109-3 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 327.)

Cross References.—As to amount of bonds of clerks of the superior courts, see § 2-3; as to amount of bond of county treasurers, see § 155-2; as to amount of bond of sheriffs, see § 162-8; as to amount of bond of coroners, see § 152-3; as to amount of bond of constables, see § 151-3; as to amount of bond of entry takers, see § 146-17; as to amount of bond of registers of deeds, see § 161-4.

§ 109-6. Effect of failure to renew bond.—Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (1869-70, c. 169, s. 2; Code, s. 1875; Rev., s. 309; C. S., s. 328.)

§ 109-7. Justification of sureties.—Every surety on an official bond re-

quired by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (1869-70, c. 169, s. 3; 1879, c. 207; Code, s. 1876; 1889, c. 7; 1891, c. 385; 1901, c. 32; Rev., s. 310; C. S., s. 329.)

Purpose — Contribution. — The intentment of this section was to provide a statement under oath to show the solvency of the sureties and afford information to the county commissioners under like sanction that the aggregate amount of the bond equaled the penalty required, and does not

affect the doctrine of contribution as it relates to the rights of the sureties to contribution between themselves. *Commissioners v. Dorsett*, 151 N. C. 307, 66 S. E. 132 (1909).

Cited in *State v. Patterson*, 97 N. C. 360, 2 S. E. 262 (1887).

§ 109-8. Compelling justification before judge; effect of failure.—When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer not exceeding twenty days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the twenty days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (1874-5, c. 120; Code, s. 1885; Rev., s. 316; C. S., s. 330.)

Cited in *Mitchell v. Kilburn*, 74 N. C. 483 (1876).

§ 109-9. Successor bonded; official bonds considered liabilities.—The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of § 109-7. (1874-5, c. 120, s. 2; Code, s. 1886; Rev., s. 317; C. S., s. 331.)

§ 109-10. Judge to file statement of proceedings with commissioners.—When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 318; C. S., s. 332.)

§ 109-11. Approval, acknowledgment and custody of bonds.—The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and

certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safekeeping. (1869-70, c. 169, s. 4; 1879, c. 207, s. 2; Code, s. 1877; Rev., s. 311; C. S., s. 333.)

§ 109-12. Clerk records vote approving bond; penalty for neglect.—It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (1790, c. 327, P. R.; 1809, c. 777, P. R.; R. C., c. 78, s. 7; 1869-70, c. 169, ss. 5, 8; Code, ss. 1878, 1881; Rev., s. 312; C. S., s. 334.)

Editor's Note.—This section serves to show the light in which individual responsibility is regarded by the legislature. See *Rawls v. Dears*, 11 N. C. 299 (1826).

§ 109-13. When commissioner liable as surety.—Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (1869-70, c. 169, s. 6; Code, s. 1879; Rev., s. 313; C. S., s. 335.)

Supplements § 162-12. — This section supplements and somewhat extends the provision of § 162-12, relating to the liability of sureties on a sheriff's bond. *Hudson v. McArthur*, 152 N. C. 445, 67 S. E. 995 (1910).

Liable to All Persons Injured.—Constructing this section and § 153-9 together, it is held that the county commissioners may be held individually liable by a person sustaining loss by reason of their failure to

perform their ministerial duty of requiring bond of a clerk of the superior court. *Moffitt v. Davis*, 205 N. C. 565, 172 S. E. 317 (1934).

Joinder of Parties and Causes of Action.—See *Ellis v. Brown*, 217 N. C. 787, 9 S. E. (2d) 467 (1940).

Cited in *State v. Patterson*, 97 N. C. 360, 2 S. E. 362 (1887), to show how stringently the obligation of seeing to the sufficiency of the bond is enforced.

§ 109-14. Record of board conclusive as to facts stated.—In all actions under § 109-13 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

§ 109-15. Person required to approve bond not to be surety.—No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 315; C. S., s. 337.)

ARTICLE 2.

Bonds in Surety Company.

§ 109-16. State officers may be bonded in surety company.—All persons who are required to give bond to the State of North Carolina to be received by the Governor or by any department of the State government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the State of North Carolina, subject to such regulations as the Governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the Insurance Commis-

sioner as to the condition of such company as required by law. (1901, c. 754; Rev., s. 272; C. S., s. 338.)

Construed against Company.—A surety bond shall be construed most strongly against the company and most favorably to its general intent and essential purpose.

Bank v. Fidelity Co., 128 N. C. 366, 38 S. E. 908 (1901), discussing compliance with requirement of notice of default.

§ 109-17. When surety company sufficient surety on bonds and undertakings.—A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein, shall be sufficient when it is executed or guaranteed by a corporation authorized in this State to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it is given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings. (1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706; Rev., s. 273; C. S., s. 339.)

Same Liability as an Individual.—A surety corporation allowed by this section to give guardian bonds, is held to the same liability on a bond given by it as an individual would be, and is responsible to the ward when the guardian's failure to prop-

erly perform his duties causes loss to the ward's estate. *Roebuck v. National Surety Co.*, 200 N. C. 196, 156 S. E. 531 (1931).

Cited in *Pierce v. Pierce*, 197 N. C. 348, 148 S. E. 438 (1929).

§ 109-18. Clerk to notify county commissioners of condition of company.—Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this State, and of each surety company whose license has been revoked, in which any officer of the county has been bonded. (Rev., ss. 295, 4803; C. S., s. 340.)

§ 109-19. Release of company from liability.—A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings. (1899, c. 54, s. 48; Rev., s. 274; C. S., s. 341.)

Getting Off Bond.—Under this section a surety company can be released from its liability on a bond only by getting off the bond. *Bank v. Fidelity Co.*, 128 N. C. 366, 38 S. E. 908 (1901).

Office.—A surety company is not liable for defalcations committed after the expiration of the term of office to which the bond refers. *Blades v. Dewey*, 136 N. C. 176, 48 S. E. 627 (1904).

Defalcations after Expiration of Term of

§ 109-20. Company not to plead ultra vires.—Any company which executes any bond, obligation or undertaking under the provisions of this article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability. (1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 342.)

§ 109-21. Failure to pay judgment is forfeiture.—If a surety company against which a judgment is recovered fails to discharge the same within sixty days from the time such final judgment is rendered, it shall forfeit its right to do business in this State, and the Insurance Commissioner shall cancel its license. (1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 343.)

§ 109-22. On presentation of proper bond officer to be inducted.—Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the State of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office. (1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5; Rev., s. 276; C. S., s. 344.)

Estoppel to Deny Validity of Bond. — Although the failure of the treasurer to sign a bond was an irregularity under this section, both the treasurer and the surety recognized their liability thereon by offer-

ing a second bond in substitution, and both were estopped to deny the validity of the first bond on the ground of such irregularity. *State v. Inman*, 203 N. C. 542, 166 S. E. 519 (1932).

§ 109-23. Expense of fiduciary bond charged to fund.—A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship to the extent of bond premiums actually paid per annum on the account of such bonds as the clerk, judge or court may allow. (1901, c. 706, s. 1, subsec. 5; Rev., s. 277; C. S., s. 345; 1939, c. 382.)

Editor's Note. — The 1939 amendment substituted the words "to the extent of bond premiums actually paid" for the

words "not exceeding one-half of one per cent."

ARTICLE 3.

Mortgage in Lieu of Bond.

§ 109-24. Mortgage in lieu of bond required to be given.—An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the State of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for thirty days. (1874-5, c. 103, s. 2; Code, s. 118; Rev., s. 265; C. S., s. 346.)

Mortgage of Intestate's Property. — A mortgage by an administrator on property of his intestate to which the administrator is heir does not comply with an order to increase the bond as such a mortgage does not increase the penalty. *Sellers v. Faulk*, 118 N. C. 573, 24 S. E. 430 (1896).

Failure to Record. — The mortgage or deed in trust permitted by this section, to be given in lieu of an official bond, is, as to proper registration, to be regarded as

a mortgage, or deed in trust, and accordingly registered as the law requires, construing the statute strictly, as required; and its entry upon the records in the clerk's office as a bond, alone, without recording it in its proper place as a mortgage is insufficient to give notice to, or priority of lien, over a deed of a subsequent purchaser of the land. *Hooper v. Tallassee Power Co.*, 180 N. C. 651, 105 S. E. 327 (1920).

§ 109-25. Mortgage in lieu of security for appearance, costs, or fine.—Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the State of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk

or justice of the peace in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

Where such mortgage upon real property is executed before a justice of the peace the power of sale shall be enforced by the clerk of the court of the county in which the criminal proceeding is had.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale of the mortgaged property, as shall also the following fees, to wit: For each sale of real property mortgaged under this section the clerk shall receive two dollars, and for each sale of personal property mortgaged under this section the clerk or justice of the peace who enforces the power of sale shall receive one dollar. (1874-5, c. 103, s. 3; Code, s. 120; 1891, c. 425, ss. 1, 2, 3; Rev., s. 266; C. S., s. 347.)

Applicability to Justice's Court.—This section, as it read in the Code of 1883, had no application in courts of justices of the peace. *Comron v. Standland*, 103 N. C. 207, 9 S. E. 317 (1889). Since the decision in this case, however, the section has been amended and the words "or justice of the peace" have been inserted near the end of the first paragraph. Ed. Note.

Foreclosure and Sale.—The clerk of the superior court may foreclose a mortgage on land given by plaintiff to secure costs of his action when the costs are awarded against him, or the clerk may report the matter to the court for a decree of sale by himself, the latter being the better practice to insure a safer title and prevent a needless sacrifice. *Clark v. Fairly*, 175 N. C. 342, 95 S. E. 550 (1918).

When the Superior Court, in term, acting through the presiding judge, has duly

acquired jurisdiction to decree foreclosure, it is his duty to supervise the sale and see that the land brings a fair price; and when such sale has not been made accordingly, he may set aside the sale, and permit the plaintiff to pay the costs properly chargeable against him. *Clark v. Fairly*, 175 N. C. 342, 95 S. E. 550 (1918).

It is proper for the court to confirm the sale, and possibly it is necessary for him to do so. *Clark v. Fairly*, 175 N. C. 342, 95 S. E. 550 (1918).

A decree of confirmation of the sale of lands to pay the cost of an action under a mortgage given to secure them, under this section, may be set aside by the judge during the term of the superior court at which it was entered. *Clark v. Fairly*, 175 N. C. 342, 95 S. E. 550 (1918).

Cited in *State v. Jenkins*, 121 N. C. 637, 28 S. E. 413 (1897).

§ 109-26. Cancellation of mortgage in such proceedings.—Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administrator, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the superior court of the county where such action was pending or where the mortgage in lieu of bond is recorded by entry of "satisfaction" upon the margin of the record where such mortgage is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name as a witness thereto, and such cancellation shall have the effect to discharge and release all the right, title and interest of the State of North

Carolina in and to the property described in such mortgage. (1905, c. 106; Rev., s. 267; C. S., s. 348; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1.)

Editor's Note. — The 1925 amendment added the provision relating to cancellation after certain acts of the party "as administrator, executor, guardian, collector, or re-

ceiver". The validating clause was omitted from this section, and will now be found as § 109-27.

§ 109-27. Validating statute. — All acts heretofore done by the several superior court clerks, canceling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

§ 109-28. Clerk of court may give surety by mortgage deposited with register. — In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the State, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (1874-5, c. 103, s. 6; Code, s. 122; Rev., s. 268; C. S., s. 349.)

§ 109-29. Mortgage in lieu of bond to prosecute or defend in civil case. — It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for thirty days. (1874-5, c. 103, s. 1; Code, s. 117; Rev., s. 269; C. S., s. 350.)

Section Strictly Observed.—This section is exceptional in its provisions, and must be strictly observed. *Eshon v. Commissioners*, 95 N. C. 75 (1886).

Undertaking on Appeal.—If it be granted that this section applies to an undertaking on appeal, the section was not complied with where the appellant deposited with the clerk, a bond due to himself and secured by a mortgage, as a substitute for the undertaking. *Eshon v. Commissioners*, 95 N. C. 75 (1886).

Section Does Not Require Mortgage.—This section does not authorize the court to require a party to execute a mortgage of real estate in the case therein provided for. It simply allows the party of whom an undertaking may be required in such cases to give such mortgage instead of it,

and the former must be for the same amount as the latter. *Wilson v. Fowler*, 104 N. C. 471, 10 S. E. 566 (1889).

Third Person Executing Mortgage for Defendant. — Where a mortgage is given by a third person for the defendant in an action, as is permitted by this section, and the mortgagor subsequently purchases a part of the mortgaged property, it was held, upon the plaintiff's recovering from the defendant, that the mortgagor has no such interest as will allow him to interfere with the plaintiff's rights under his judgment. *Ryan v. Martin*, 104 N. C. 176, 10 S. E. 169 (1889).

Not Applicable to Justice's Court.—This section has no application in courts of justices of the peace. *Comron v. Standland*, 103 N. C. 207, 99 S. E. 317 (1889).

§ 109-30. Affidavit of value of property required.—In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed, or of the justice, to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (1874-5, c. 103, s. 4; Code, s. 121; Rev., s. 270; C. S., s. 351.)

§ 109-31. When additional security required.—If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was

given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (1874-5, c. 103, s. 5; Code, s. 119; Rev., s. 271; C. S., s. 352.)

ARTICLE 4.

Deposit in Lieu of Bond.

§ 109-32. Deposit of cash or securities in lieu of bond; conditions and requirements.—In lieu of any written undertaking or bond required by law in any matter, before any court of the State, the party required to make such undertaking or bond may make a deposit in cash or securities of the State of North Carolina or of the United States of America, of the amount required by law or, in the case of fiduciaries, of the amount of the trust, in lieu of the said undertaking or bond and such deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; C. S., s. 352(a); 1947, c. 936.)

Editor's Note.—Prior to the 1947 amendment this section related only to deposits of cash. See 25 N. C. Law Rev. 384.

When Applicable.—While this section by its terms applies to pending actions, as suggested in 1 N. C. Law Rev. 283, it is "probably not intended to be limited to pending actions but to apply to all cases

in which such undertakings or bonds are required to be given. This extends to all cases the same requirements for making cash deposit as is now required in the plaintiff's undertaking for costs in a civil action, just as a mortgage on real or personal property may be given in lieu of bond or undertaking."

ARTICLE 5.

Actions on Bonds.

§ 109-33. Bonds in actions payable to court officer may be sued on in name of State.—Bonds and other obligations taken in the course of any proceeding at law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the State. (R. C., c. 13, s. 11; Code, s. 51; Rev., s. 280; C. S., s. 353.)

Quoted in Lackey v. Pearson, 101 N. C. 651, 8 S. E. 121 (1888).

§ 109-34. Liability and right of action on official bonds.—Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry taker, surveyor, sheriff, coroner, constable, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (1793, c. 384, s. 1, P. R.; 1825, c. 9, P. R.; 1833, c. 17; R. C., c. 78, s. 1; 1869-70, c. 169, s. 10; Code, s. 1883; Rev., s. 281; C. S., s. 354.)

Cross Reference.—As to surety waiving his rights under §§ 109-33 through 109-35 by appearing and answering in a summary proceeding, see § 109-36 and the note thereto.

Leave of Court Unnecessary.—The section gives in express terms the right to

bring one or more suits upon one or more of the bonds to "every injured person," not on leave from the court, but absolutely and unconditionally so soon as the breach occurs, except that it is to be instituted in the name of the State. *Boothe v. Upchurch*, 110 N. C. 62, 14 S. E. 642 (1892).

Sections Construed Together. — This section and § 109-37 relate to the same subject matter, are part of one and the same statute, and must be construed together. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144 (1943).

Remedies against Superior Court Clerks. — Our statutes provide two separate and distinct remedies against clerks of the superior courts—one in behalf of the injured individual for a specific fund to which he is entitled or on account of a particular wrong committed against him by the officer, as provided in this section; and one in behalf of the new clerk against his predecessor in office to recover possession of records, books, papers and money in the hands of the outgoing clerk by virtue or under color of his office, as provided for in § 2-22. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144 (1943).

This section is not repugnant to the provisions of § 2-22, which requires that each successive clerk shall receive from his predecessor all the records, moneys, and property of his office, but only gives an additional remedy for the benefit of individuals who have cause of complaint against an unfaithful clerk of the superior court. *Peebles v. Boone*, 116 N. C. 57, 21 S. E. 187 (1895).

The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. *State v. Grizzard*, 117 N. C. 106, 23 S. E. 93 (1895).

Person Injured. — Where H. places a note for collection in a constable's hands, and the constable sues out a warrant, obtains a judgment and receives the amount (even though there is no execution) and fails to pay the same to H. H. as the person injured is entitled to have the suit brought to his use under this section. *Holcomb v. Franklin*, 11 N. C. 274 (1826).

The father of a girl under eighteen, to whom a marriage license has been issued without the father's consent, is the person injured within the meaning of this section. *Joyner v. Roberts*, 112 N. C. 111, 16 S. E. 917 (1893).

Under this section, claimants of a fund arising from a partition sale are the proper parties to sue on bond of the clerk for failure of the clerk to pay funds turned over to him by the commissioners in partition. *Smith v. Patton*, 131 N. C. 396, 42 S. E. 849 (1902).

An action can be maintained by the clerk of a superior court in his own name upon the official bond of the sheriff, for the recovery of costs accrued in such court and collected by the sheriff, and due and pay-

able to said clerk and others. *Jackson v. Maultsby*, 78 N. C. 174 (1878).

By Virtue or under Color of Office. — The last clause of this section is very comprehensive in its terms, scope and purpose. It, on purpose, enlarges the compass of the conditions of official bonds and their purpose, and the legislature intended by it, it seems, to prevent an evil pointed out in two or three of the cases. There were no adequate reasons why the conditions of official bonds should not extend to and embrace all the official duties of the office, and there were serious ones of justice and policy why they should. All persons interested are bound to accept the official services of such officers, as occasion may require, and they should be made secure in their rights, and have adequate remedy for wrongs done by them. Besides all public officers should be held to a faithful discharge of their duties as such. It is singular that the clause last recited, notwithstanding a well known evil to be remedied, was not enacted until 1883. It first appears as part of the Code. Now official bonds and the conditions of them embrace and extend to all acts done by virtue or under color of office of the officer giving the bond. *Thomas v. Connelly*, 104 N. C. 342, 10 S. E. 520 (1889); *Kivett v. Young*, 106 N. C. 567, 10 S. E. 1019 (1890).

In *State v. Leonard*, 68 F. (2d) 228 (1934) a sheriff's bond contained a condition limiting the faithful execution of the office to specific duties such as execution of process and in view of this, and the wording of this section, the bond was held to afford no basis for a recovery by a person whom the sheriff wounded while acting in his official capacity.

This section extends the liability on the sheriff's general official bond and imposes liability for wrongful arrest and the use of excessive force in making an arrest under color of office. *Price v. Honeycutt*, 216 N. C. 270, 4 S. E. (2d) 611 (1939).

The surety on a bond of a delinquent tax collector is not liable for an arrest made by the collector in order to force the payment of a delinquent tax, since such act of the tax collector is not done under color of his office and does not come within the condition of the bond that he should "well and truly perform all the duties of his said office." *Henry v. Wall*, 217 N. C. 365, 8 S. E. (2d) 223, 127 A. L. R. 854 (1940).

Same—Acts Which Should Have Been Performed. — It is true that the clause seems in terms to provide only for acts done by the officer, and not for those which he should do but does not. But it would be putting a very narrow construc-

tion on the statute to say that he and his sureties are liable for what he did, but not for what he should have done and did not do, although the damage to the party was equally as great. *State v. Grizzard*, 117 N. C. 106, 23 S. E. 93 (1895).

Same—Illustrative Acts.—Where a clerk appointed the commissioner to make a partition sale, without bond, and on approving his report received and receipted the proceeds as clerk, took out his costs and entered the amount due each heir at law on his docket, and disbursed a portion of said fund to the parties entitled, this would seem to be a receipt of the fund, by the clerk "by virtue of his office." *Judges v. Deans*, 9 N. C. 93 (1822); *McNeill v. Morrison*, 63 N. C. 508 (1869); *Cox v. Blair*, 76 N. C. 78 (1877). But if this were otherwise the clerk received it "as clerk," and so receipted for it. This was certainly a receipt of the money "under color of his office," and, indeed, this is admitted in the answer. The older decisions were made when these words were not in the statute. The clause embraces all cases where the officer received the money in his official capacity, but when he may not be authorized or required to receive the same. In such case the bond is responsible for the safe custody of the fund so paid in. *Smith v. Patton*, 131 N. C. 396, 42 S. E. 849 (1902), citing *Broughton v. Haywood*, 61 N. C. 380 (1867); *Greenlee v. Sudderth*, 65 N. C. 470 (1871); *Brown v. Coble*, 76 N. C. 391 (1877); *Ex parte Cassidey*, 95 N. C. 225 (1886); *Thomas v. Connelly*, 104 N. C. 342, 10 S. E. 520 (1889); *Sharpe v. Connelly*, 105 N. C. 87, 11 S. E. 177 (1890); *Presson v. Boone*, 108 N. C. 78, 12 S. E. 897 (1891).

Under this section the official bond of a constable is liable for the false imprisonment of a person by a constable, as such, without process or color thereof. *Warren v. Boyd*, 120 N. C. 56, 26 S. E. 700 (1897).

When the clerk of the superior court is appointed receiver of a minor's estate, he takes and holds the funds by virtue of his office of clerk, and his sureties upon his official bond as such officer are liable for any failure of duty on his part in that respect. *Boothe v. Upchurch*, 110 N. C. 62, 14 S. E. 642 (1892).

Bonds Cumulative.—Official bonds given by an officer during any one term of office are cumulative, and the new bond does not

discharge the old one. *Oats v. Bryan*, 14 N. C. 451 (1832); *Bell v. Jasper*, 37 N. C. 597 (1843); *Poole v. Cox*, 31 N. C. 69, 49 Am. Dec. 410 (1848); *Moore v. Boudinot*, 64 N. C. 190 (1870); *Pickens v. Miller*, 83 N. C. 544 (1880); *Fidelity, etc., Co. v. Fleming*, 132 N. C. 332, 43 S. E. 899 (1903).

Where the surety has renewed the bond of a clerk of the court upon his election to that office a second time, acknowledged its liability and received premiums thereon, its liability is cumulative for all defalcations thereunder, whether for the second term its principal was continuing to act de facto or de jure. *Lee v. Martin*, 186 N. C. 127, 118 S. E. 914 (1923).

The first bonds continue to be a security for the discharge of the duties during the whole term, and the new bonds become additional security for the discharge of such of the duties as have not been performed at the time they are given. *Poole v. Cox*, 31 N. C. 69, 49 Am. Dec. 410 (1848). See also, *Oats v. Bryan*, 14 N. C. 451 (1832); *Bell v. Jasper*, 37 N. C. 597 (1843).

Action on Bond and on Case.—An action of debt on a sheriff's bond for money collected, and a nonsuit therein, is a sufficient demand to enable the plaintiff to sustain an action on the case for the same cause of action. *Fagan v. Williamson*, 53 N. C. 433 (1862).

Negligent Conduct of Jailer Imputed to Sheriff.—Under this section the sheriff and the surety on his official bond are liable for the wrongful death of a prisoner resulting from the negligence of the jailer in locking the prisoner, in the weakened condition, in a cell with a person whom the sheriff and the jailer knew to be violently insane, and who assaulted the prisoner during the night, inflicting the fatal injury. *Dunn v. Swanson*, 217 N. C. 279, 7 S. E. (2d) 563 (1940). For note on this case, see 19 N. C. Law Rev. 101.

Applied in Bank of Spruce Pine v. McKinney, 209 N. C. 668, 184 S. E. 506 (1936).

Cited in Jordan v. Harris, 225 N. C. 763, 36 S. E. (2d) 270 (1945), following *Price v. Honeycutt*, 216 N. C. 270, 4 S. E. (2d) 611 (1939); *Dunn v. Swanson*, 217 N. C. 279, 7 S. E. (2d) 563 (1940) and distinguishing *Midgett v. Nelson*, 214 N. C. 396, 199 S. E. 393 (1938); *Davis v. Moore*, 215 N. C. 449, 2 S. E. (2d) 366 (1939).

§ 109-35. Complaint must show party in interest; election to sue officer individually.—Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action

against the officer to recover special damages for his injury. (1793, c. 384, ss. 2, 3, P. R.; R. C., c. 78, s. 2; 1869-70, c. 169, s. 11; Code, s. 1884; Rev., s. 282; C. S., s. 355.)

Cited in *Western Carolina Power Co. v. Yount*, 208 N. C. 182, 179 S. E. 804 (1935).

§ 109-36. Summary remedy on official bond.—When a sheriff, coroner, constable, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days' notice in writing of the motion must have been previously given. (1819, c. 1002, P. R.; R. C., c. 78, s. 5; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2; Code, s. 1889; Rev., s. 283; C. S., s. 356.)

Cumulative Remedy.—It has never been understood that this cumulative and optional remedy obstructed the bringing of a regular action on the bond, when the injured party preferred to have recourse to it. *Lackey v. Pearson*, 101 N. C. 651, 8 S. E. 121 (1888).

There is no provision in the statute giving a preference to the party or parties who first seek such summary remedy. And, withal, before any claim, preferential or otherwise, can be established under this statute, notice must be given, the court must try the cause, and judgment must be obtained. *Western Carolina Power Co. v. Yount*, 208 N. C. 182, 179 S. E. 804 (1935).

It was never intended that the mere lodging of a motion under this section, established a preference, or right to establish a preference, over other creditors when such other creditors had been guilty of no laches in asserting their claims. *Western Carolina Power Co. v. Yount*, 208 N. C. 182, 179 S. E. 804 (1935).

To What Officers Applicable.—In *Smith v. Moore*, 79 N. C. 86 (1878), it was held that the power conferred by this section as it read in the Revised Code of 1856, was confined to the officers named therein, and that there was no way to hold a commissioner appointed to make a judicial sale liable for the proceeds thereof, except by an action instituted by the parties entitled to the money. Subsequently to this decision the words "or other public officer," have been inserted in the section; but applying the ejusdem generis rule it would seem that these words would not include a master in chancery and that the *Smith* case declares the law as it still stands. See, however, *Ex parte Curtis*, 82 N. C. 435 (1880), where the court states that a remedy against executrix and clerk and master

should have been by summary motion under this section.

Actions by Persons Entitled to Money.—This section gives a summary remedy against public officers only to those entitled to the money, so that a new clerk cannot proceed under it against a former clerk, for not paying office money over to him as his successor. *O'Leary v. Harrison*, 51 N. C. 338 (1859).

Proceedings May Be Consolidated with General Creditors' Suit.—Plaintiff instituted summary proceedings under this section against the clerk of the superior court and the surety on his bond to recover for the clerk's default in failing to return to plaintiff, as ordered by the superior court, moneys deposited with the clerk. Notice and complaint in the proceeding were served on defendants. Thereafter another creditor of the clerk instituted suit in her own behalf and in behalf of all persons similarly situated, and decree was entered appointing a permanent receiver for the clerk, authorizing the receiver to bring suit on the clerk's bonds, and enjoining all creditors of the clerk from instituting any other suit or action against him or on his bonds. In the summary proceeding under this section, the surety on the clerk's bond pleaded the decree affirming receiver in bar to plaintiff's right to judgment, and the trial court dismissed the summary proceeding. Held, the summary proceeding should have been consolidated with the suit in the nature of a general creditor's bill. *Western Carolina Power Co. v. Yount*, 205 N. C. 321, 171 S. E. 321 (1933).

Justice's Jurisdiction.—Since the repeal of § 13 of c. 80 of Battle's Revision it has been decided by repeated adjudications that a justice of the peace has no jurisdiction of an action on a constable's bond. *Coggins v. Harrell*, 86 N. C. 317 (1882).

Judgment.—Under this practice, judgment was entered for the amount of the bond, the execution to be satisfied on payment of the sum collected and costs. *Fell v. Porter*, 69 N. C. 140 (1873). From the language of the opinion in this case, it would seem that at the time of decision the operation of this section had been suspended.—Ed. Note.

Where A. obtained a judgment against B., clerk of the superior court, for a sum of money in his hands by virtue of his office, and B. died, and his administrator, upon demand, failed to pay the money, it was held that the court below erred in overruling a motion by the plaintiff for a judgment upon the official bond of the clerk under the provisions of this section. *Cooper v. Williams*, 75 N. C. 94 (1876).

Notice.—As this section read in *Battle's Revision* the proceedings were "without other notice than is given by the delinquency of the officer." See *Prairie v. Jenkins*, 75 N. C. 545 (1876).

§ 109-37. Officer unlawfully detaining money liable for damages.—When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum per annum from the time of detention until payment. (1819, c. 1002, s. 2, P. R.; R. C., c. 78, s. 9; 1868-9, c. 169; Code, s. 1890; Rev., s. 284; C. S., s. 357.)

This section must be considered in connection with the preceding section. *Pasquotank County v. Hood*, 209 N. C. 552, 184 S. E. 5 (1936).

Authority for an individual to sue an officer for money wrongfully detained, as provided for in § 109-34, and this section relate to the same subject matter and are a part of one and the same statute. They must be construed together. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144 (1943).

This and Preceding Section Are Not Applicable to Liquidation of Banks by Commissioner of Banks.—This and the preceding section are inapplicable to impose liability for damages in a case where the Commissioner of Banks took over the affairs of a bank which had been theretofore constituted the financial agent of the county and which had county funds on deposit and in its possession. *Pasquotank County v. Hood*, 209 N. C. 552, 184 S. E. 5 (1936).

The Commissioner of Banks holding a portion of the fund, subject to the orders of the court and for the purpose of liquidation, could not be said to constitute an "unlawful detention," nor should he in his representative capacity be liable in damages as a penalty for so doing. The pun-

Demand Not Necessary.—In a proceeding by the State, against a clerk of the superior court and the surety on his bond to recover sums embezzled by the clerk, the plaintiffs have the right to pursue the summary remedy under this section, upon their motion after due notice, and demand upon the clerk is not necessary. *State v. Gant*, 201 N. C. 211, 159 S. E. 427 (1931).

Waiver by Appearance.—Where a summary proceeding under this section has been instituted against a clerk of the superior court and the surety on his bonds to recover sums embezzled by the clerk, and the surety has entered a general appearance and filed answer, etc., the surety has waived its rights, if any it had, under §§ 109-33 through 109-35, to object that the plaintiffs could not maintain a summary proceeding under this section. *State v. Gant*, 201 N. C. 211, 159 S. E. 427 (1931).

Applied in *State v. Sawyer*, 223 N. C. 102, 25 S. E. (2d) 443 (1943).

ishment would not fall upon a defaulting or delinquent public officer, as intended by the statute, but would penalize funds held in trust for all the creditors and stockholders whose stock assessments have helped to contribute. *Pasquotank County v. Hood*, 209 N. C. 552, 184 S. E. 5 (1936).

Default of Officer Must Be Shown.—In an action to recover the 12 per cent allowed under this section, it is necessary that the plaintiff show some adequate default. *Hannah v. Hyatt*, 170 N. C. 634, 87 S. E. 517 (1916).

Liability of Surety.—While, as against the principal on the bond of a clerk of the superior court, interest under our statute at the rate of 12 per cent is collectible from the time of defalcation, the amount of the penalty on his bond determines the liability of the surety thereon. *State v. Martin*, 188 N. C. 119, 123 S. E. 631 (1924).

Effect of Waiver of Interest from Date of Defalcation.—Where, in an action against a clerk of the superior court and his surety to recover sums embezzled by the clerk, the State waives the interest from the date of the actual defalcations, but does demand the 12 per cent from the date of the expiration of each term of office; a judgment awarding damages at 12 per cent, under the provisions of this sec-

tion, on the sums defaulted from the expiration of each term is not error, the amount being within the penalty of the bond. *State v. Gant*, 201 N. C. 211, 159 S. E. 427 (1931).

Interest by Way of Damages.—Whether or not the clerk is entitled to the benefits of this section, in a suit against his predecessor, is not now decided; but, granting that he is not so entitled, the law allows in-

terest by way of damages on money wrongfully detained. *State v. Watson*, 223 N. C. 437, 27 S. E. (2d) 144 (1943); *State v. Watson*, 224 N. C. 502, 31 S. E. (2d) 465 (1944).

Applied in *Windley v. Lupton*, 212 N. C. 167, 193 S. E. 213 (1937.)

Cited in *Wood v. Citizens Bank*, 199 N. C. 371, 154 S. E. 623 (1930).

§ 109-38. Evidence against principal admissible against sureties.—

In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions. (1844, c. 38; R. C., c. 44, s. 10; 1881, c. 8; Code, s. 1345; Rev., s. 285; C. S., s. 358.)

Judgments as Evidence. — In an action against an officer and one of the sureties on his official bond, the record of a judgment against the officer, and others of his sureties, in a previous action against them for the same demand, and on the same bond, but in which action the surety in the present action was not a party, is competent evidence to fix the amount due by the officer. *Morgan v. Smith*, 95 N. C. 396 (1886).

In a learned note to the case of *Charles v. Hoskins*, 14 Iowa 471, 83 Am. Dec. 378, the annotator, Judge Freeman, says: "The question how far a judgment or decree is conclusive against a surety of a defendant, or against one who is liable over to a defendant, and who was not a party to the action, is involved in the greatest confusion. Between the intimate relations which exist between such a person and the defendant in the suit, on the one side, and the fundamental principle that no one ought to be bound by proceedings to which he was a stranger, on the other, the court has found it difficult to steer." *Insurance Co. v. Bonding Co.*, 162 N. C. 384, 78 S. E. 430 (1913).

The cases are numerous in which it has been decided that a judgment rendered against a guardian is not, unaided by the statute, admissible as evidence against the surety to his bond. *McKellar v. Powell*, 11 N. C. 34 (1825).

The same rulings have been made in regard to the sureties to an administration bond. *Chairman v. Clark*, 11 N. C. 43 (1825); *Vanhook v. Barnett*, 15 N. C. 268 (1833); *Governor v. Montford*, 23 N. C. 155 (1840); *Governor v. Carter*, 25 N. C. 338 (1843). So in reference to the liability

of his surety to an amercement against the sheriff.

The act of 1844, (this section) however, changed the rule of law, and rendered competent against the sureties to official bonds, and those given by executors, administrators and guardians, whatever evidence would be competent against the principals, and this was declared to be conclusive, where the evidence was a judgment against him, in *Brown v. Pike*, 74 N. C. 531 (1876); and in *Badger v. Daniel*, 79 N. C. 386 (1878).

The act of 1881 amended the previous enactment by making the evidence "presumptive only" against the sureties. *Moore v. Alexander*, 96 N. C. 34, 1 S. E. 536 (1887).

"It seems that our predecessors in office upon this Bench have intimated, and in one case held, that such judgments, unaided by the statute, are inadmissible in evidence against the surety. *Moore v. Alexander*, 96 N. C. 34, 1 S. E. 536 (1887). But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal *prima facie* only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense. *Charles v. Hoskins*, 14 Iowa 471, 83 Am. Dec. 378, and notes. In the notes to this case all the authorities are carefully reviewed." *Insurance Co. v. Bonding Co.*, 162 N. C. 384, 78 S. E. 430 (1913).

While this section fixed the rule as to actions brought upon the official bonds of

clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors, or guardians, the precedents were in hopeless discord as to bonds not covered by the statute, until Associate Justice Brown laid down the rule in *Dixie Fire Ins. Co. v. American Bonding Co.*, 162 N. C. 384, 78 S. E. 430 (1913). "But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal *prima facie* only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." *Charleston, etc., Ry. Co. v. Lassiter & Co.*, 208 N. C. 209, 179 S. E. 789 (1935).

Debts and Assets.—In the construction of this section, it is decided that the judgment against the principal upon such official bonds as the section mentions, is not only conclusive of the debt, as it was without the aid of the enactment, but of assets also, and this effect is given to a judgment against a guardian, upon his official bond, in *Brown v. Pike*, 74 N. C. 531 (1876); *Badger v. Daniel*, 79 N. C. 386 (1878); *Morgan v. Smith*, 95 N. C. 396 (1886).

In *Armistead v. Harramond*, 11 N. C. 339 (1826), Hall, J., said that a "judgment against an administrator is evidence against him of a debt due by the intestate, and is evidence also of assets in his hands to discharge it; and although, for the reason before given, it is also evidence of a debt due, as far as it relates to his sureties," etc. *Morgan v. Smith*, 95 N. C. 396 (1886). Since the passage of the act of 1844, the judgment is also evidence of the assets against the surety. *Brown v. Pike*, 74 N. C. 531 (1876), and cases cited.

Admissibility of Admissions of Administrator of Principal against Surety When Their Interests at Variance.—A judgment

§ 109-39. **Officer liable for negligence in collecting debt.**—When a claim is placed in the hands of any sheriff, coroner or constable for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof. (1844, c. 64; R. C., c. 78, s. 3; 1869-70, c. 169, s. 12; Code, s. 1888; Rev., s. 286; C. S., s. 359.)

Applicable to Claims, Not Executions.—This section applies only to claims placed in the hands of the sheriff or other officer for collection—such claims as are within the jurisdiction of a justice of the peace, and may be collected by judgment and process of execution granted by that magistrate. It does not apply to executions is-

upon the admissions in the answer of the administrator bank of a deceased county treasurer is not competent in an action by the county commissioners as evidence against the surety on the official bond of the deceased when the bank has been made a party defendant and the surety at once raises the issue as to whether a part of the defalcation was moneys defaulted from the bank when the deceased was acting as its assistant cashier, the interest of the bank and the surety being in conflict, and this section not applying in such cases. *Commissioners of Chowan County v. Citizens Bank*, 197 N. C. 410, 149 S. E. 380 (1929).

For case recognizing the principle adopted in *Commissioners of Chowan County v. Citizens Bank*, 197 N. C. 410, 149 S. E. 380 (1929), but holding the rule inapplicable under peculiar facts of case, see *Charleston, etc., Ry. Co. v. Lassiter & Co.*, 208 N. C. 209, 179 S. E. 879 (1935).

Not Applicable to Tort Action.—The rule that the judgment against the principal in an official or fiduciary bond is presumptive evidence against the sureties under this section does not apply, as this is not an action on the bond, but in tort. *Martin v. Buffaloe*, 128 N. C. 305, 38 S. E. 902 (1901).

Annual account of guardian is competent evidence against him, and presumptive evidence against his sureties. *Loftin v. Cobb*, 126 N. C. 58, 35 S. E. 230 (1900).

Joinder of Administrator and Sureties.—Under this section the sureties on an administrator's bond are properly joined with the administrator, where it is shown that the administrator received a benefit from a falsified final account by reason of which the plaintiffs' judgment against the administrators remained unpaid. *State v. McCannless*, 193 N. C. 200, 136 S. E. 371 (1927).

Cited in *Pullen v. Mining Co.*, 71 N. C. 563 (1874); *Gurganus v. McLawhorn*, 212 N. C. 397, 193 S. E. 844 (1937).

suing from the superior or other courts of record. The reason for the distinction is clearly and certainly pointed out in *McLaurin v. Buchanan*, 60 N. C. 91 (1863). The statute, in effect, now is just as it was when that decision was made. *Brunhild v. Potter*, 107 N. C. 415, 12 S. E. 55 (1890).

What Constitutes Negligence.—The de-

gree of diligence required is that which a prudent man would ordinarily exercise in the management of his own affairs. A constable is not bound to such strict accountability as when process is delivered to him as an officer. *Morgan v. Horne*, 44 N. C. 25 (1852); *Lipscomb v. Cheek*, 61 N. C. 332 (1867). Therefore, what constitutes negligence must depend upon the facts in

each particular case; five months' delay was held negligence in *Nixon v. Bagby*, 52 N. C. 4 (1859).

A constable is not bound to sue out a warrant on a claim put in his hands for collection, when the issuing of such process would be entirely fruitless. *State v. Holcombe*, 24 N. C. 211 (1842).

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ARTICLE 1.

Child Labor Regulations.

§ 110-1. **Minimum age.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between fourteen and sixteen years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law; and provided, that boys twelve years of age and over securing a certificate from the Department of Labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of § 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under § 95-11. Nothing in this article shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1.)

Editor's Note.—The cases cited below were decided under the former law.

As to employment of children before the Child Labor Act of 1903, see *Ward v. Allen*, 126 N. C. 948, 36 S. E. 194 (1900); *Fitzgerald v. Furniture Co.*, 131 N. C. 636, 42 S. E. 946 (1902); *Hendrix v. Cotton Mills*, 138 N. C. 169, 50 S. E. 561 (1905). As to employment since the Act, see *Rolin v. Tobacco Co.*, 141 N. C. 300, 53 S. E. 891 (1906); *Leathers v. Tobacco Co.*, 144 N. C. 330, 57 S. E. 11 (1907); *Starnes v. Mfg. Co.*, 147 N. C. 556, 61 S. E. 525 (1908);

Pettit v. Atlantic Coast Line R. Co., 156 N. C. 119, 72 S. E. 195 (1911); *McGowan v. Mfg. Co.*, 167 N. C. 192, 82 S. E. 1028 (1914); *Evans v. Lumber Co.*, 174 N. C. 31, 93 S. E. 430 (1917).

As to employment in messenger or delivery service, see *Pettit v. Atlantic Coast Line R. Co.*, 186 N. C. 9, 118 S. E. 840 (1923). As to mere volunteer injured in performance of simple and ordinary task, see *Reaves v. Catawba Mfg., etc., Co.*, 206 N. C. 523, 174 S. E. 413 (1934).

§ 110-2. **Hours of labor.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day; and provided further, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of Labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday; and provided further, that girls between the ages of

seventeen and eighteen years may be employed as ticket takers, concession attendants, and cashiers in motion picture theaters up to 10:30 at night under such rules and regulations as the Commissioner of Labor may prescribe. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1.)

Editor's Note.—The 1951 amendment inserted the last proviso.

Violation of Section as Proximate Cause of Injury.—In order to make an employer liable in damages for an injury sustained by an employee being required to work

more than 8 hours a day in violation of this section, it must be shown that the violation of the statute was a proximate cause of the injury complained of. *Williamson v. Old Dominion Box Co.*, 205 N. C. 350, 171 S. E. 335 (1933).

§ 110-3. Lunch period.—No minor under sixteen years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ 110-4. Posting of hours.—Every employer shall post and keep conspicuously posted in the establishment wherein any minor under eighteen is employed, permitted, or allowed to work, a printed abstract of this article and a list of the occupations prohibited to such minors, to be furnished by the State Department of Labor. (1937, c. 317, s. 4.)

§ 110-5. Time records.—Every employer shall keep a time book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the State Department of Labor. (1937, c. 317, s. 5.)

§ 110-6. Hazardous occupations prohibited for minors under sixteen.—No minor under sixteen years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under sixteen years of age shall be employed, permitted or allowed to work in or about or in connection with: Construction work of any kind, shipbuilding, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven wood-working machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat grinding machines, dough brakes or mixing machines in bakeries or cracker making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

In or about or in Connection with Quarry.—In *Campbell Contracting Co. v. Maryland Casualty Co.*, 21 F. (2d) 909 (1927), it is said: "We cannot agree with the contention that a boy operating a hoist, that by means of a cable pulls cars loaded

with stone out of a quarry 150 to 175 feet distant, and whose duty it was upon signal to have the whistle blown, warning of a blast, and whose further duty it was to warn passersby, was not working 'in or about or in connection with a quarry.'"

§ 110-7. Hazardous occupations prohibited for minors under eighteen.—No minor under the age of eighteen years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under eighteen be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room: Provided, however, that this section shall not prohibit a minor under the age of eighteen years from working in any establishment where beer is sold and not consumed on the premises, and to which has been issued only an "off premises" license for the sale of beer. Nor shall any girl under the age of eighteen years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages. Nor shall any minor under eighteen years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the State Department of Labor and the said State Department of Labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. (1937, c. 317, s. 7; 1943, c. 670.)

Editor's Note. — The 1943 amendment added the proviso to the second sentence.

§ 110-8. Employment of minors in street trades; sale or distribution of newspapers, etc.—No boy under fourteen years of age and no girl under eighteen years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under sixteen years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after seven p. m. or before six a. m., or unless he has an employment certificate issued in accordance with § 110-9. The State Commissioner of Labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this article or existing law.

Nothing in this section shall be construed to prevent male persons over fourteen years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after eight o'clock p. m. and before five o'clock a. m., and that the hours of work and the hours in school do not exceed eight in any one day, except boys twelve years of age and over who have secured a certificate from the Department of Labor for the sale or distribution of newspapers, magazines or periodicals: Provided further, that such person shall not be permitted or allowed to work more than four hours per day nor more than twenty-four hours per week: Provided further, that nothing in this article shall be construed to prevent boys twelve years of age and over, upon securing a proper certificate from the Department of Labor, from being employed outside

school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than seventy-five customers are served in one day): Provided, that such boys shall not be employed between the hours of seven o'clock p. m. and six o'clock a. m., nor for more than ten hours in any one week. (1937, c. 317, s. 8.)

§ 110-9. **Employment certificate required.**—Before any minor under eighteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required. (1937, c. 317, s. 9.)

Newsboy Not Employee. — A newsboy engaged in selling papers is not an employee of the newspaper within the meaning of that term as used in the Workmen's Compensation Act, the newsboy not being on the newspaper's payroll and being without authority to solicit subscriptions and being free to select his own methods of affecting sales, although some degree of supervision was exercised by the newspaper. *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380, 168 S. E. 408 (1933).

§ 110-10. **Officers authorized to issue certificates.**—The employment certificate required by this article shall be issued only by county or city superintendents of public welfare in such form and under such conditions as may be prescribed by the State Department of Labor. (1937, c. 317, s. 10.)

§ 110-11. **Refusal and revocation of employment certificate.** — The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the Commissioner of Labor. (1937, c. 317, s. 11.)

§ 110-12. **Method of issuing employment certificates.**—The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by someone duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

(a) A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

(b) A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

(c) Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

(d) In the case none of the aforesaid proofs of age shall be obtainable, and only in such case, the issuing officer may accept the signed statement of the physician authorized to make the physical examinations required by this section, stating that, after examination, it is his opinion that the minor has attained the

age required by law for the occupation in which he expects to engage. Such statement shall be accompanied by an affidavit, signed by the minor's parents or guardian, certifying to the name, date and place of birth of the minor and that the proofs of age specified in the preceding subdivisions of this section cannot be produced.

(3) A statement of physical fitness, signed by a public health, public school or other physician assigned to this duty by the issuing officer with the approval of the State Department of Labor, setting forth that such minor has been thoroughly examined by such physician and that he is either physically fit to be employed in any legal occupation, or that he is physically fit to be employed under certain limitations, specified in the statement. If the statement of physical fitness is limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated. The minor shall not be charged a fee for such examination or statement of physical fitness. The method of making such examinations shall be prescribed by the State Department of Labor.

(4) A school record signed by the principal of the school which the minor has last attended or by someone duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the prospective employer of the minor for whom the employment certificate is issued, and such certificate shall be valid only for the employer named therein and for the occupation designated in the promise of employment. (1937, c. 317, s. 12.)

Editor's Note. — For decisions under *v. Old Dominion Box Co.*, 205 N. C. 350, former law, see *Rolin v. Tobacco Co.*, 141 171 S. E. 335 (1933).
N. C. 300, 53 S. E. 891 (1906); *Williamson*

§ 110-13. Employment certificate as evidence.—Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the State, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ 110-14. Regular and vacation employment certificates.—Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ 110-15. Duties of employers in regard to employment certificates.—Every employer receiving an employment certificate shall, during the period of the minor's employment, keep such certificate on file at the place of employment and accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this article. The failure of any employer to produce for inspection such employment certificate shall be prima facie evidence of the unlawful employment of the minor. (1937, c. 317, s. 15.)

§ 110-16. Certificates of age.—Upon request, it shall be the duty of the officer authorized to issue employment certificates to issue to any person between the ages of eighteen and twenty-one desiring to enter employment a certificate of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this article, and such certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the State, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 16.)

§ 110-17. State supervision of the issuance of employment certificates.—The State Department of Labor shall prescribe such rules and regulations

for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the State Department of Labor within one week after issuance. The State Department of Labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ 110-18. **Rules and regulations.**—The Commissioner of Labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this article as may be deemed necessary by said Commissioner. (1937, c. 317, s. 18.)

§ 110-19. **Inspection and prosecutions.**—It shall be the duty of the State Department of Labor and of the inspectors and agents of said State Department of Labor to enforce the provisions of this article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said State Department of Labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the article, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed.

Any person authorized to enforce this article may require an employer of a minor for whom an employment certificate is not on file to either furnish him within ten days the evidence required for an employment certificate showing that the minor is at least eighteen years of age, or to cease to employ or permit or allow such minor to work. (1937, c. 317, s. 19.)

§ 110-20. **Penalties.**—Whoever employs or permits or allows any minor to be employed or to work in violation of this article, or of any order or ruling issued under the provisions of this article, or obstructs the State Department of Labor, its officers or agents, or any other persons authorized to inspect places of employment under this article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), or imprisonment for not more than thirty days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice from the State Department of Labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the article shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this article may be recovered by the State in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

ARTICLE 2.

Juvenile Courts.

§ 110-21. **Exclusive original jurisdiction over children.**—The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

1. Who is delinquent or who violates any municipal or State law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

2. Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child; or

3. Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the State, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the State. (1919, c. 97, s. 1; C. S., s. 5039.)

Cross Reference.—As to domestic relations court, see § 7-101 et seq.

Editor's Note.—The Apprentice Law, Revisal, ch. 4, and the Juvenile Delinquent Law, Public Laws 1915, ch. 222, and all other laws inconsistent with this act are repealed and substituted by this article.

Constitutionality.—This article is held to be a constitutional and valid enactment. *State v. Burnett*, 179 N. C. 735, 102 S. E. 711 (1920); *In re Coston*, 187 N. C. 509, 122 S. E. 183 (1924).

The statute creating juvenile courts in the several counties of this State is valid, and the statute confers jurisdiction on the courts to place children under its jurisdiction in public and private institutions in proper instances. *Winner v. Brice*, 212 N. C. 294, 193 S. E. 400 (1937).

Purpose.—This section does not deal with delinquent children as criminals, but as wards of the State, and undertakes to give the control and environment that may lead to their reformation and enable them to become law-abiding and useful citizens, and a support and not a hinderance to the Commonwealth and the objection that the statute ignores or unlawfully withholds the right to a trial by jury cannot be sustained. *State v. Burnett*, 179 N. C. 735, 102 S. E. 711 (1920).

Juvenile courts were created and organized for the purpose of administering this law, and for the original hearing and determination of matters and causes within its scope, and as such were empowered to "make such orders and decrees therein as the right and justice of the case may require," with right of appeal. *In re Prevatt*, 223 N. C. 833, 28 S. E. (2d) 564 (1944).

This section imposes upon the court the constant duty to give to each child subject to its jurisdiction such oversight and con-

trol in the premises as will conduce to the welfare of such child and to the best interest of the State. *In re Morris*, 224 N. C. 487, 31 S. E. (2d) 539 (1944).

Sections Interdependent. — The Child's Welfare Act, Public Laws of 1919, ch. 97, and this and the following sections thereof, establishing the juvenile courts were enacted as a whole, and the sections are interrelated and interdependent, and the intent thereof is so to be interpreted. *State v. Ferguson*, 191 N. C. 668, 132 S. E. 644 (1926).

Section Not Inconsistent with § 17-39. —Original jurisdiction to adjudge a child delinquent or neglected having been conferred on the juvenile court by this section, nevertheless this statute does not repeal § 17-39, and is not inconsistent therewith. No limitation is placed by this statute upon the jurisdiction previously conferred upon the superior court by that section to issue writs of habeas corpus and to hear and determine the custody of children of parents separated but not divorced. *In re Prevatt*, 223 N. C. 833, 28 S. E. (2d) 564 (1944).

Not Amendment to Adoption Law. — The Juvenile Court Act was in no respect an amendment to the former Adoption Law, and did not affect the procedure therein prescribed for the adoption of minors. *Ward v. Howard*, 217 N. C. 201, 7 S. E. (2d) 625 (1940).

Criminal Jurisdiction. — The juvenile court, as a separate part of the superior court, is given by this section, among other things, the sole power to investigate charges of misdemeanors, and of felonies with punishment not exceeding a ten-year imprisonment, made against children between the ages of fourteen and sixteen years at the time of the offense committed, and excludes the jurisdiction of the justice

of the peace to bind them over to the superior court in such instances. *State v. Coble*, 191 N. C. 554, 107 S. E. 132 (1926).

By this section and the following sections of this article in case of children under the age of sixteen years charged with being delinquent by reason of the violation of the criminal laws of the State, it is provided and intended to be provided in effect: (a) That children under fourteen years of age are no longer indictable as criminals, but must be dealt with as wards of the State, to be cared for, controlled and disciplined with a view to their reformation. (b) That in case of children between fourteen and sixteen years of age, and as to felonies, whenever the punishment cannot exceed ten years, they may if the instance requires it, be bound over to the superior court to be prosecuted under the criminal law appertaining to the charge. (c) That in case of children from fourteen to sixteen years of age as to felonies, whenever the punishment is ten years and over they are amenable to prosecution for crime as in case of adults. *State v. Burnett*, 179 N. C. 735, 102 S. E. 711 (1920).

Assault with Deadly Weapon.—The juvenile court has exclusive jurisdiction over investigation of a charge of an assault with a deadly weapon, inflicting a serious injury, made by a child within sixteen years of age, and where a justice of the peace has assumed jurisdiction and bound the defendant over to the superior court, the case will, on motion, be removed to the juvenile court, to be proceeded with as the statute directs, though at the latter date the offender's age may be more than sixteen years. *State v. Coble*, 181 N. C. 554, 107 S. E. 132 (1921).

Willful Neglect of or Refusal to Support Illegitimate Child.—Where defendant is over sixteen years of age during the time he is charged with willfully neglecting or refusing to support his illegitimate child, the superior court and not the juvenile court has jurisdiction, notwithstanding that conception of the child occurred prior to defendant's sixteenth birthday. *State v. Bowser*, 230 N. C. 330, 53 S. E. (2d) 282 (1949).

Duration of Jurisdiction.—Where the jurisdiction of the juvenile court has once attached it remains during the minority of the youthful offender, for the purpose of his correction and reformation. *State v. Coble*, 181 N. C. 554, 107 S. E. 132 (1921); *In re Coston*, 187 N. C. 509, 122 S. E. 183 (1924).

Jurisdiction to determine the right of custody of an infant as between persons with whom the infant had been placed

with a view to adoption and welfare officers seeking to place the infant with his family, is within the exclusive jurisdiction of the juvenile court. *In re Thompson*, 228 N. C. 74, 44 S. E. (2d) 475 (1947).

This section gives exclusive original jurisdiction to the superior court where the custody of a child less than sixteen years of age is in question and establishes the juvenile courts as separate, though not necessarily independent, part of the superior courts for the administration of the Act, and makes the clerks of the superior courts judges of the juvenile courts. *In re Hamilton*, 182 N. C. 44, 108 S. E. 385 (1921).

Exceptions to Jurisdiction in Cases Involving Custody of Child.—The juvenile branch of the superior court has exclusive original jurisdiction in all cases wherein the custody of an infant under sixteen years of age is the subject of the controversy except (1) in cases between undivorced parents living in a state of separation, § 17-39, or (2) where there is an action for divorce, in which a complaint has been filed, pending in this State, § 50-13, or (3) where the parents have been divorced by decree of a court of a state other than North Carolina, § 50-13. *Phipps v. Vannoy*, 229 N. C. 629, 50 S. E. (2d) 906 (1948). And see the 1949 amendment to § 50-13 which was intended to give the superior court jurisdiction in all cases where one of the parents is seeking custody. 27 N. C. Law Rev. 452.

Under the 1949 amendment to § 50-13 either parent may institute a special proceeding to obtain custody of his or her child in cases not theretofore provided for by § 50-13 or § 17-39 and this amendment authorizes a special proceeding by the mother of an illegitimate child to obtain its custody from her aunt, with whom she had entrusted the child, and thus restricts the jurisdiction of the juvenile court in such instances. *In re Cranford*, 231 N. C. 91, 56 S. E. (2d) 35 (1949).

"Controversy" Respecting Custody of Child.—In a proceeding by a father to obtain custody of his child from the parents of his deceased wife, it was contended that the father, being a fit and suitable person, had sole right to the custody of his child as a matter of law, and that therefore a "controversy" respecting the child's custody, such as would confer jurisdiction upon the juvenile court under paragraph 3 of this section, could not arise in the absence of proof of abandonment or other special fact. It was held that this contention was untenable, since the question was one of jurisdiction and not of the father's

right to custody, and since the contention was perforce made in the midst of a "controversy." *Phipps v. Vannoy*, 229 N. C. 629, 50 S. E. (2d) 906 (1948). See the 1949 amendment to § 50-13.

Controversy between Father and Parents of Deceased Wife.—Under paragraph 3 of this section the juvenile branch of the superior court has exclusive jurisdiction of a proceeding by a father to obtain custody of his child from the parents of his deceased wife, notwithstanding that the custody of the child was awarded to the wife in a divorce action pursuant to the provisions of § 50-13. *Phipps v. Vannoy*, 229 N. C. 629, 50 S. E. (2d) 906 (1948). The 1949 amendment to § 50-13 was intended to overrule this case and give the superior court jurisdiction in all cases where one of the parents is seeking custody. 27 N. C. Law Rev. 452.

Allegations Showing Jurisdiction.—Allegations of a petition, admitted by demurrer, that the children in question were each under sixteen years of age, resided in the county and were subject to such conditions and improper guardianship and control as to endanger their morals, health, and welfare, and that petitioner was entitled to their custody as their guardian under a deed executed by their father, for the purpose of placing them in a private institution in accordance with the wishes of their father, are sufficient to show exclusive original jurisdiction of the children, for the purposes of the statute, in the juvenile court of the county. *Winner v. Brice*, 212 N. C. 294, 193 S. E. 400 (1937).

Voluntary Surrender of Custody to Juvenile Court.—Where the mother of minor

children, for the purpose of having their custody given to their paternal grandmother, the father being dead, voluntarily came before the juvenile court and signed a paper turning over the custody of her children to such court, the court obtained jurisdiction during such time as the custody and control of the children is necessary, notwithstanding the absence of the statutory requirements in cases where the juvenile court proceeds directly, and the mother might not thereafter attack on the ground of want of jurisdiction a subsequent order of the juvenile court taking the custody away from the grandmother for change of condition and placing the children in the custody of an institution. *In re Bumgarner*, 228 N. C. 639, 46 S. E. (2d) 833 (1948).

A court awarding exclusive custody of a minor assumes the obligation to see that its confidence is not abused, and the court is justified in proceeding to that end with an inquiry *ex mero motu* or at the instance of an interested party. *In re Morris' Custody*, 225 N. C. 48, 33 S. E. (2d) 243 (1945).

Where the father of a minor child brings a writ of habeas corpus in the superior court for the custody of the child, the respondent being the maternal grandmother of the child in whose care the child was left by its mother, the superior court has original jurisdiction, and the respondent's motion to transfer the hearing from the superior court to the juvenile court is properly overruled. *In re Ten Hoopen*, 202 N. C. 223, 162 S. E. 619 (1932).

Applied in *McEachern v. McEachern*, 210 N. C. 98, 185 S. E. 684 (1936).

§ 110-21.1. Jurisdiction of juvenile courts over violations of motor vehicle laws.—All jurisdiction heretofore vested in the superior courts by the provisions of G. S. 20-218.1 is hereby vested in the juvenile courts of the State of North Carolina. (1949, c. 163, s. 2.)

Editor's Note.—Former § 20-218.1 referred to in the above section provided: "No juvenile court or domestic relations court of this State shall have jurisdiction over any offense involving violation of any of the motor vehicle laws or of any of the laws relating to the operation of motor

vehicles on the highways of this State when such offense has been committed by a person over fifteen years of age. Any such offense shall be within the jurisdiction of the court or courts which would have jurisdiction if the offender were over sixteen years of age."

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts.—There shall be established in each county of the State a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of county.

The clerk of the superior court of each county in the State shall act as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county. Proceedings in such cases may be initiated be-

fore such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article: Provided, the board of commissioners of any county shall have the right in their discretion to co-operate with the governing body of such city in the election of a judge of a juvenile court provided for in § 110-44, which judge when so elected shall perform all the duties, and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article; such judge to be so elected by the joint action of the governing bodies of such city and county shall hold office for the term of one year, and until his successor shall be duly elected, and the county availing itself of the provisions of this section shall pay said judge for services rendered the county (outside of city) such sum as the county commissioners of said county shall deem just and proper. (1919, c. 97, s. 2; C. S., s. 5040; Ex. Sess. 1920, c. 85; 1945, c. 186, s. 2.)

Local Modification. — Buncombe: 1935, c. 220; 1941, c. 208, s. 3; Durham: 1945, c. 503; Forsyth: 1935, c. 385; 1941, c. 110; Mecklenburg: 1937, c. 251.

Editor's Note.—Prior to the 1945 amendment the proviso to the second sentence of the second paragraph applied only to

counties whose county seat contained twenty-five thousand inhabitants or more. For comment on the amendment, see 23 N. C. Law Rev. 341.

Cited in State v. Bowser, 230 N. C. 330, 53 S. E. (2d) 282 (1949).

§ 110-23. Definitions of terms.—The term "court" when used in this article without modification shall refer to the juvenile courts to be established as herein provided. The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the judge of the joint city and county juvenile court elected as provided in § 110-22. The term "child" shall mean any minor less than sixteen years of age. The term "adult" shall mean any person sixteen years of age or over. (1919, c. 97, s. 3; C. S., s. 5041.)

The Term "Court."—While the Act confers general jurisdiction upon the superior court, it will be understood that the term "court" when used in this statute without modification refers to the juvenile court which is therein created as a separate but not independent part of the superior court. In re Prevatt, 223 N. C. 833, 28 S. E. (2d) 564 (1944).

The Word "Child."—The provision of § 3, ch. 97, Public Laws 1919, that the meaning of the word "child" shall be one "less than eighteen years of age," and the term

"adult" shall mean any person eighteen years old or over, intended, from the interpretation of the entire chapter, that to come within the provision of the Act the child should be a minor under the age of sixteen years. The discrepancy was cured by the enactment of this section in its present form in the Consolidated Statutes of 1919. State v. Coble, 181 N. C. 554, 107 S. E. 132 (1921).

Cited in In re McGraw, 228 N. C. 46, 44 S. E. (2d) 349 (1947).

§ 110-24. Sessions of court; records; general provisions.—Sessions of the court shall be held at such times and in such places within the county as the judge shall from time to time determine. In the hearing of any case coming within the provisions of this article the general public may be excluded and only such persons admitted thereto as have a direct interest in the case. Sessions of the court shall not be held in conjunction with any other business of the superior court, and children's cases shall not be heard at the same time as those against adults.

The court shall maintain a full and complete record of all cases brought before it, to be known as the juvenile record. All records may be withheld from indiscriminate public inspection in the discretion of the judge of the court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication under the provisions of this article shall operate as a disqualification of any child for any

public office, and no child shall be denominated a criminal by reason of such adjudication, nor shall such adjudication be denominated a conviction.

This article shall be construed liberally and as remedial in character. The powers hereby conferred are intended to be general and for the purpose of effecting the beneficial purposes herein set forth. It is the intention of this article that in all proceedings under its provisions the court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case. (1919, c. 97, s. 4; C. S., s. 5042.)

§ 110-25. Petition to bring child before court.—Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact. (1919, c. 97, s. 5; C. S., s. 5043.)

Where the record does not disclose that a petition to the juvenile court was originally filed by appellant, as provided in this section, he may not be heard to complain of irregularity in this respect, since the proceeding was instituted at his instance, and he was personally present at the hearing. *In re Prevatt*, 223 N. C. 833, 28 S. E. (2d) 564 (1944).

§ 110-26. Issuance of summons; traveling expenses allowed.—Upon the filing of the petition or upon the taking of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parent, or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses shall be a charge upon the county in which the petition is filed. (1919, c. 97, s. 6; C. S., s. 5044; 1939, c. 50.)

Editor's Note.—The 1939 amendment “when approved by the judge of the superior court.” struck out of the last sentence the words

§ 110-27. Custody of child may be immediate; release; bail.—If it appears from the petition that the child is embraced within subdivision one of the first section of this article, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for. (1919, c. 97, s. 7; C. S., s. 5045.)

§ 110-28. **Service of summons.**—Service of summons shall be made personally by reading to and leaving with the persons summoned a true copy thereof: Provided, that if the court is satisfied that reasonable but unsuccessful effort has been made to serve the summons personally upon any of the parties named therein, or if it shall appear to the satisfaction of the court that it is impracticable to serve a summons personally upon any of them, the court may make an order providing for service of the summons by registered mail or by publication or otherwise in such manner as the judge shall determine. It shall be sufficient to confer jurisdiction if service is effected at any time before the time fixed in the summons for the return thereof; but the court, if requested by the child or a parent, or, in case there is no parent, by the person having the guardianship, custody or supervision of the child, shall not proceed with the hearing earlier than three days after the service. Failure to serve a summons upon any person other than said child shall not impair the jurisdiction of the court to proceed in cases arising under subdivision one of the first section of this article, provided that for good cause shown the court shall have made an order dispensing with such service.

If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court or bring the child, he may be proceeded against as for contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual, or that the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued on the order of the court either against the parent or guardian or other person having custody of the child or with whom the child may be, or against the child himself.

The sheriff or other lawful officer of the county in which the action is taken shall serve all papers as directed by the court, but the papers may be served by any person delegated by the court for that purpose. (1919, c. 97, s. 8; C. S., s. 5046.)

When Summons to Parents Unnecessary.—Where the juvenile court has examined into the condition of a child and has adjudged that the child is of wandering or dissolute parents, and living with its poor and dependent grandparents, who had acquiesced in the investigation and its results, it is unnecessary to the valid adjudication fixing the child as a ward of the

State and taking its custody accordingly, that the parents should have been notified to be present at the investigation, though such course is to be commended when the child is living with its parents or under their control, or they are living at the time within the jurisdiction of the court. *In re Coston*, 187 N. C. 509, 122 S. E. 183 (1924).

§ 110-29. **Hearing; disposition of child.**—Upon the return of the summons or other process or after any child has been taken into custody, at the time set for the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the State, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may:

1. Place the child on probation subject to the conditions provided hereinafter; or
2. Commit the child to the custody of a relative or other fit person of good

moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

3. Commit the child to the custody of the State Board of Charities and Public Welfare, to be placed by such Board in a suitable institution, society or association as described in subsection 4 of this section, or in a suitable family home and supervised therein; or

4. Commit the child to a suitable institution maintained by the State or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the State and approved by the State Board of Charities and Public Welfare authorized to care for children, or to place them in suitable family homes; or

5. Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

6. If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law. (1919, c. 97, s. 9; C. S., s. 5047; 1929, c. 84.)

Cross Reference. — As to authority to commit offenders to reformatory, see § 134-10.

Editor's Note. — The 1929 amendment inserted in subsection 3 the words "in a suitable institution, society or association as described in subsection 4 of this section".

Jurisdiction in Felonies.—In reference to the disposition of children charged as delinquents by reason of having violated a State or municipal law, and that alone, it is provided in § 110-29 that a child of 14 years, charged with a felony in which the punishment, as now fixed by law, cannot exceed 10 years, the judge of the juvenile court may, if the case be of a nature to require it, bind such child over to the next term of the superior court, it being the clear and necessary inference that, as to children of 14 years and upward, and in case of felonies when the punishment may exceed 10 years, the juvenile department of the superior court is without jurisdiction of the offense. As to children of 14 years and over, and in case of felonies in which the punishment may be more than 10 years, they shall, in all instances, be subject to prosecution for crime as in case of adults. *State v. Burnett*, 179 N. C. 735, 102 S. E. 711 (1920).

Legislation Justified. — The legislature has no unlimited and arbitrary power over minors in respect to detaining them in reformatories, and enactments relating thereto are justified only upon the idea that the child is without parental care, and that his environments are such that he may reach

manhood without restraint or training under corrupting influences, unless the State, as *parens patriae*, performs the duty which devolves primarily upon the parent. In *re Watson*, 157 N. C. 340, 72 S. E. 1049 (1911).

The juvenile court has no power to place a child anywhere for adoption, and when it ordered a child committed to an asylum upon its finding that the child was a neglected child, the further provision of the order that the asylum should have power to place the child in a home for adoption is void. *Ward v. Howard*, 217 N. C. 201, 7 S. E. (2d) 625 (1940).

Trial by Jury.—The constitutional right of trial by jury does not extend to an investigation into the status and needs of a child upon the question as to whether he should be sent to a reformatory for his own good as well as the good of the community in the interest of good citizenship, nor does the restraint therein put upon the child amount to a deprivation of his liberty without due process of law, nor is it a punishment for crime. In *re Watson*, 157 N. C. 340, 72 S. E. 1049 (1911).

Habeas Corpus.—When a child is placed and detained in a reformatory under order of court, without notice to the parent or giving him an opportunity to be heard, the parent may have the legality of the detention inquired into upon his petition for a writ of habeas corpus. In *re Watson*, 157 N. C. 340, 72 S. E. 1049 (1911).

Applied in Winner v. Brice, 212 N. C. 294, 193 S. E. 400 (1937).

homes.—No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime. Provisions shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children temporarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may arrange with any incorporated institution, society or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the State Board of Charities and Public Welfare, appoint a matron or superintendent or both and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society or association for the care of children residing or found within the county who may be detained therein. (1919, c. 97, s. 10; C. S., s. 5048.)

§ 110-31. Probation officers; appointment and discharge; compensation.—The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the State Board of Charities and Public Welfare.

The county superintendent of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the State Board of Charities and Public Welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the State Board of Charities and Public Welfare.

The State Board of Charities and Public Welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the State Board of Charities and Public Welfare. (1919, c. 97, s. 11; C. S., s. 5049.)

§ 110-31.1. Probation officers as members of county welfare staffs.

—(a) By written agreement between the judge of the juvenile court and the county superintendent of public welfare, all probation officers of the juvenile court may be regular employees of the county department of public welfare, attached to the staff of the department and responsible directly to the county superintendent of public welfare as chief probation officer of the county. Upon the election or appointment of a judge of the juvenile court who is not a party to any agreement heretofore entered into under this section, a new agreement may be entered into as provided herein.

(b) When such agreement shall have been entered into, probation officers shall be employed and compensated in the same manner as all other employees of the county department of public welfare are employed and compensated. (1947, c. 94.)

§ 110-32. Probation; conditions; revocation.—When the court places any child or adult on probation as provided in this article it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: That the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officers; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation. (1919, c. 97, s. 12; C. S., s. 5050.)

§ 110-33. Duties and powers of probation officers.—It shall be the duty of a probation officer to make such investigations before, during or after the trial or hearing of any case coming before the court as the court shall direct, and to report thereon in writing. The probation officer shall take charge of any child before or after the trial or hearing when so directed by the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct the probationer and other persons responsible for the welfare of the probationer regarding same, and shall enforce all the conditions of probation. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring of reports, and in other ways, and shall report upon the progress of each case under his supervision at least

monthly to the court. Such officer shall use all suitable methods not inconsistent with the conditions imposed by the court to aid and encourage persons on probation and to bring about improvement in their conduct and condition. Such officer shall keep detailed record of his work. He shall keep accurate and complete accounts of all moneys collected from persons under his supervision; he shall give receipts therefor and shall make at least monthly returns thereof; such officer shall make such report to the State Board of Charities and Public Welfare as it may from time to time require, and shall perform such other duties as the court under whose direction such officer is serving shall direct. Every probation officer shall have all the powers of a peace officer within the jurisdiction of the court which he serves. With the approval or under the direction of the judge of the court in which a probation officer is serving, such officer is authorized and empowered to act as probation officer over any person on probation transferred to his supervision from any other court and may act as parole officer over any person released from a correctional institution when requested to do so by the authorities thereof and when authorized so to act by the judge of the court in which such probation officer is serving. (1919, c. 97, s. 13; C. S., s. 5051.)

§ 110-34. **Support of child committed to custodial agency.**—Whenever any child is committed by the court to the custody of an institution, association, society or person other than its parent or guardian, compensation for the care of such child, when approved by the order of the court, shall be a charge upon the county, but the court may at the issuance and service of an order to show cause on the parent or other person having the duty under the law to support such child adjudge that such parent or other person shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and willful failure to pay such sum may be punished as a contempt of court. (1919, c. 97, s. 14; C. S., s. 5052.)

§ 110-35. **Selection of custodial agency.**—In committing any child to any institution or other custodial agency other than one supported and controlled by the State or in placing the child under any guardianship other than that of its natural guardians, the court shall as far as practicable select as the custodial agency an institution, society or association governed by persons of like religious faith as the parents of such child or an individual holding the same religious belief. (1919, c. 97, s. 15; C. S., s. 5053.)

§ 110-36. **Modification of judgment; return of child to parents.**—Any order or judgment made by the court in the case of any child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child, except that a child committed to an institution supported and controlled by the State may be released or discharged only by the governing board or officer of such institution.

Any parent or guardian, or, if there be no parent or guardian, the next friend of any child who has been or shall hereafter be committed by the court to the custody of an institution other than an institution supported and controlled by the State, or to the custody of any association, society or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that application for the release of the child has been made to and denied by such institution, association, society or person, or that the said institution, association, society or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served by the court upon such institution, association, society or person, whose duty it shall be to file a reply to the same within five days. If, upon examination of the petition and reply, the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear the facts and determine the question at issue, and may return such child to the custody of its parents or guardian or direct such institution, association, society or person to

make such other arrangements for the child's care and welfare as the circumstances of the case may require.

Any child while under the jurisdiction of the court shall be subject to the visitation of the probation officer or other agent of the court authorized to visit such child. (1919, c. 97, s. 16; C. S., s. 5054.)

Cross Reference. — As to appeals, see § 110-40.

Rights of Parents. — Parents, guardian, etc., must be notified and given an opportunity to be heard in proceedings in the juvenile courts under this section, with the right to review in the superior court upon adverse judgment; and if the child is taken over by the State, they are allowed, on proper application at any time, to have their child brought before the court, its condition inquired into and further orders made concerning it except where committed to a State institution and then they may apply directly to the superior court, thus giving full consideration to the family relation and parental rights. *State v. Burnett*, 179 N. C. 735, 102 S. E. 711 (1920).

Same—Child in State Institution.—The exception in this section, that a case may not be investigated on the petition of the parent, etc., when the child is committed to the custody of an institution controlled by the State, applies to the action of the juvenile court, and does not limit the superior court in its general jurisdiction over matters of law and equity, in making upon proper application and appropriate writs, inquiry and investigation into the status and condition of children disposed of under the statute, or in rendering such orders and decrees therein as the rights and justice of the case or the welfare of the child may require. *State v. Burnett*, 179 N. C. 735, 102 S. E. 711 (1920).

§ 110-37. Guardian appointed if welfare of child promoted.—Whenever in the course of a proceeding instituted under this article it shall appear to the court that the welfare of any child within the jurisdiction of the court will be promoted by the appointment of an individual as general guardian of its person, when such child is not committed to an institution or to an incorporated society or association, or by the appointment of an individual or corporation as general guardian of its property, the court shall have jurisdiction to make such appointment, either upon the application of the child or of some relative or friend, or upon the court's own motion, and in that event an order to show cause may be made by the court to be served upon the parent or parents of such child in such manner and for such time, prior to the hearing, as the court may deem reasonable. In any case arising under this article the court may determine as between parents or others whether the father or mother or what person shall have the custody and direction of said child, subject to the provisions of the preceding section. (1919, c. 97, s. 17; C. S., s. 5055.)

§ 110-38. Medical examination of child; disposition if mentally defective.—The court, in its discretion, either before or after a hearing, may cause any child within its jurisdiction to be examined by one or more duly licensed physicians, who shall submit a written report thereon to the court. If it shall appear to the court that any child within the jurisdiction of the court is mentally defective he may cause the child to be examined by two licensed physicians, and on the written statement of the two examining physicians that it is their opinion that the child is mentally defective, feeble-minded, or epileptic the court may commit such child to an institution authorized by law to receive and care for mentally defective, feeble-minded or epileptic children, as the case may be. No child shall be committed to such institution unless the parent or parents or the guardian or custodian of such child, if such there be, are given an opportunity for a hearing.

Whenever a child within the jurisdiction of the court and under the provisions of this article appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in a hospital or otherwise, and the expense thereof, when approved by the court, shall be a charge upon the county or the appropriate subdivision thereof; but the court may adjudge that the person or persons having the duty under the law to support such

child shall pay a part or all of the expenses of such treatment as provided in § 110-34 of this article. (1919, c. 97, s. 18; C. S., s. 5056.)

§ 110-39. Neglect by parents; encouraging delinquency by others; penalty.—A parent, guardian or other person having the custody of a child who omits to exercise reasonable diligence in the care, protection or control of such child, causing it to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the State as provided in this article, or who permits such child to associate with vicious, immoral or criminal persons, or to beg or solicit alms, or to be an habitual truant from school, or to enter any house of prostitution or assignation or any place where gambling is carried on, or to enter any place which may be injurious to the morals, health, or general welfare of such child, and any such person or any other person who knowingly or willfully is responsible for, encourages, aids, causes or connives at or who knowingly or willfully does any act to produce, promote or contribute to the condition which caused such child to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the State, shall be guilty of a misdemeanor. (1919, c. 97, s. 19; C. S., s. 5057.)

Jurisdiction.—The juvenile courts of the State are now given by statute exclusive original jurisdiction of delinquent children under sixteen years of age, with prescribed procedure by which an adjudication may be therein determined. *State v. Ferguson*, 191 N. C. 668, 132 S. E. 664 (1926).

Instruction.—In a prosecution under this

section, a charge that defendant would be guilty if he encouraged, aided and abetted the prosecuting witness "in moral delinquency" is error, since this section uses the term "to be adjudged a delinquent" and the two terms are not synonymous. *State v. Bullins*, 226 N. C. 142, 36 S. E. (2d) 915 (1946).

§ 110-40. Appeals.—An appeal may be taken from any judgment or order of the juvenile court to the superior court having jurisdiction in the county by the parent or, in case there is no parent, by the guardian, custodian or next friend of any child, or by any adult described in §§ 110-38 and 110-39 of this article on behalf of any child whose case has been heard by the juvenile court. Written notice of such appeal shall be filed with the juvenile court within five days after the issuance of the judgment or order of such court.

On receipt of notice of such appeal the judge of the juvenile court shall, within five days thereafter, prepare, sign, and file with the record of the case a statement of the case on appeal, together with his decision, and notice of the appeal, and exhibit such statement to the parties or their attorneys upon request. If either party excepts or objects to the statement as partial, inadequate, or erroneous he must put his exceptions or objections in writing, and file the original and two copies thereof with the judge of the juvenile court within ten days of the filing by the judge of a statement of case on appeal. The judge of the juvenile court shall forthwith transmit his statement of the case on appeal and any exceptions or objections thereto to the resident judge of the district or to the judge holding the courts of the district.

The judge of the superior court shall on receiving a statement or record of appeal from the juvenile court hear and determine the questions of law or legal inference and the judge shall deliver to the clerk of the superior court of the county in which the action or proceeding is pending his order or judgment. The clerk of the superior court shall immediately notify the judge of the juvenile court of the order or judgment.

Where the appeal is to the superior court upon issues of fact, either party may demand that the same be tried at the first term of said court after the appeal is docketed in said court, and said trial shall have precedence over all other cases except the cases of exceptions to homesteads and the cases of summary ejectment: Provided, that said appeal shall have been docketed prior to the convening of the said court: Provided further, that the presiding judge may take up for

trial in advance any pending case in which the rights of the parties or the public require it. (1919, c. 97, s. 20; C. S., s. 5058; 1949, c. 976.)

Editor's Note.—The 1949 amendment rewrote this section. For brief comment on the amendment, see 27 N. C. Law Rev. 443.

Authority of Superior Court Judge.—Where the proceedings for the custody of a child under sixteen years of age had been transferred to the juvenile court, and comes again to the superior court judge on appeal, the judge of the latter court has authority to review the findings of fact and the judgment of the former court, under the supervision and control given him by the statute, this section, and his findings upon competent evidence are conclusive on appeal to the Supreme Court. In re Hamilton, 182 N. C. 44, 108 S. E. 385 (1921).

Where the superior court judge has referred a proceeding brought by a husband in that court for the custody of his child, less than sixteen years of age, and the matter comes on appeal to the superior court again, the validity of the order sending or transferring the petition to the juvenile court for original investigation does not present a controlling question, or affect the jurisdiction of the superior court on the appeal, for thereon the judge thereof has ample authority to hear the case, either because it was properly instituted in the first instance or by virtue of the appeal. In re Hamilton, 182 N. C. 44, 108 S. E. 385 (1921).

Application First Made to Juvenile Court.—Where the parent of a child that has been adjudicated a ward of the State under the statute relating to juvenile courts afterwards claims the possession of the child, the procedure requires that she make application to the juvenile court that had adjudicated the matter in order to avoid conflict and uncertainty as to status or condition of the child, to the end that an investigation be made of the circumstances

in the course and practice of the courts. In re Coston, 187 N. C. 509, 122 S. E. 183 (1924).

Effect of Juvenile Court's Adjudication.

—Where the juvenile court has by proper proceeding acquired jurisdiction of the parties and of the subject matter of children whose custody is subject to controversy, its adjudication for the welfare of the children must be held effective and binding on the parties, subject to review on appeal. In re Prevatt, 223 N. C. 833, 28 S. E. (2d) 564 (1944).

Writ of Habeas Corpus.—The statutory remedy by appeal being provided from the determination of the juvenile court from its judgment that a certain child comes within the statutory provisions, and the status of the child has been ascertained by the juvenile court as being that of a ward of the State, the writ of habeas corpus is not available to the parent or other person claiming the child, unless in rare and exceptional cases wherein the welfare of the child has not been properly provided for. In re Coston, 187 N. C. 509, 122 S. E. 183 (1924).

While prima facie the parent has the right to the custody of his child in preference to others, this right is not an absolute one and must yield when the best interest of the child requires it; and when the father has filed his petition in habeas corpus proceedings for the custody of his child in the possession of his deceased wife's parents, the award of the superior court judge for the respondents upon findings, sustained by the evidence, that the father was an unsuitable person, and that the best interest of the child required that she should remain with her grandparents, will not be disturbed in the Supreme Court on appeal. In re Hamilton, 182 N. C. 44, 108 S. E. 385 (1921).

§ 110-41. Compensation of judge.—The judge of the juvenile court shall be paid a reasonable compensation for his services, the amount to be determined by the county commissioners, and the amount thus determined by the county commissioners shall be charged against the public funds of the county. And such compensation shall be independent of any compensation which may come to him as clerk of the superior court. (1919, c. 97, s. 21; C. S., s. 5059.)

Cross Reference.—As to salaries of city and joint city and county juvenile courts, see §§ 110-22 and 110-44.

§ 110-42. Public officers and institutions to aid.—It is hereby made the duty of every State, county or municipal official or department to render such assistance and co-operation within his or its jurisdiction or power as shall further the objects of this article. All institutions or other agencies to which

any person coming within the provision of this article may be sent are hereby required to give such information concerning such child to the court or to any other officer appointed by it as said court or official may require for the purposes of this article. The court is authorized to seek the co-operation of all societies, organizations or individuals to the end that the court may be assisted in every way in the discharge of its duties. (1919, c. 97, s. 22; C. S., s. 5060.)

§ 110-43. Rules of procedure devised by court.—The court shall have power to devise and publish rules to regulate the procedure in cases coming within the provisions of this article and for the conduct of all probation and other officers of the court in such cases. The court shall devise and cause to be printed for public use such forms for records and for various petitions, orders, processes, and other papers in the cases coming within this article as shall meet the requirements thereof, and all expenses incurred in complying with the provisions of this article shall be a public charge. (1919, c. 97, s. 23; C. S., s. 5061.)

§ 110-44. City juvenile courts and probation officers.—Every city in North Carolina where the population was, by the last federal census report, ten thousand or more may maintain a juvenile court, to which is hereby given the powers, duties and obligations of this article to be exercised within their territorial boundaries. Such city juvenile courts shall conduct their business in accordance with the procedure set forth in this article as applying to the county juvenile court. It is hereby made the duty of governing bodies of such cities to make provisions for such courts and bear the expense thereof, either by requiring the recorder to act as a juvenile judge or by the appointment of a separate judge. The governing bodies of such cities shall also appoint one or more assistant probation officers who shall serve within its jurisdiction under the general supervision of the chief probation officer of the county, which chief probation officer of the county is hereby made the chief probation officer of the city court herein provided for. The salary of the juvenile court judge shall be fixed and paid by the governing body of the city, and such governing bodies are hereby given authority to expend such sums from the public funds of the city as may be required to carry this article into effect.

In case it may appear to the governing bodies of such cities herein described that it would be best to allow the county juvenile court to transact the business of the city, they may make such provisions and agreements with the county commissioners for the expense of the joint court as may be agreed upon, and in such event such a city is hereby permitted to make such arrangement in lieu of establishing a city juvenile court. But in case the county commissioners will not agree to such arrangement, then the city may establish a juvenile court, as provided in this section. Provided, that in the event the governing bodies of such cities reach an agreement with the county commissioners, whereby the county juvenile court shall also transact the business of the city juvenile court, the governing bodies of such city and county, by joint resolution, may elect a judge and an assistant judge of the combined court, who may be persons other than the clerk of the superior court, and who shall hold such office for the term of one year, and until their successors shall be duly elected. Such judge and assistant judge, when so elected, shall perform all the duties and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article. The assistant judge provided for by this section shall only perform the functions of judge of the combined juvenile court when the regular judge is unavoidably absent, or sick, and no orders shall be entered by him except in such cases. The compensation of the judge and of the assistant judge provided for by this section shall be determined by the county commissioners and paid by such county. The part of said salary that shall be paid by such city shall be

determined by agreement between the governing bodies of the two units, as hereinbefore provided for. The authority is also hereby given by this section for the election of an assistant judge of the juvenile court in cases where counties elect to combine with a city juvenile court and let such court transact the joint business of both county and city.

Any town of five thousand population which is not a county seat, and in which there is a recorder's court, may, if deemed advisable and necessary by the governing body, provide for the conduct of a juvenile court within the territorial jurisdiction of such recorder's court: Provided, that the provisions and procedure of this article are fully followed as in case for towns of ten thousand inhabitants. (1919, c. 97, s. 24; C. S., s. 5062; 1923, c. 193; 1943, c. 594; 1945, c. 186, s. 1.)

Local Modification. — Durham: 1945, c. 503; City of Greensboro: 1949, c. 669.

Editor's Note.—Prior to the 1923 amendment the population in the first paragraph was determined by the census of 1910 instead of the census of 1920.

The 1943 amendment added that part of the second paragraph beginning with the proviso. For comment on amendment, see 21 N. C. Law Rev. 344.

The 1945 amendment substituted in the first sentence the words "last federal census report" for the words "census of one thousand nine hundred and twenty." Prior to the amendment the maintenance and establishment of a juvenile court was made mandatory by the first and second paragraphs. For comment on amendment, see 23 N. C. Law Rev. 340.

ARTICLE 3.

Control over Indigent Children.

§ 110-45. Institution has authority of parent or guardian.—Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this State, which shall be an institution existing under and by virtue of the laws of this State, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C. S., s. 5063.)

§ 110-46. Regulations of institution not abrogated.—Nothing in this article shall be construed in any way to abrogate any of the rules and regulations of such institutions insofar as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C. S., s. 5064.)

§ 110-47. Enticing a child from institution.—It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child. (1917, c. 133, s. 3; C. S., s. 5065.)

§ 110-48. Violation a misdemeanor.—Any person violating any of the provisions of §§ 110-45, 110-46 and 110-47 shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 133, s. 4; C. S., s. 5066.)

§ 110-49. Permits and licenses must be had by institutions caring for children.—No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of caring for and placing dependent, neglected, abandoned, desti-

tute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Charities and Public Welfare. The said Board shall issue such permit recommending such business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in § 108-3, subsection 5, shall annually procure a license from the State Board of Charities and Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6.)

ARTICLE 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-50. Consent required for bringing child into State for placement or adoption.—(a) No person, agency, association, institution, or corporation shall bring or send into the State any child for the purpose of giving his custody to some person in the State or procuring his adoption by some person in the State without first obtaining the written consent of the State Board of Public Welfare.

(b) The person with whom a child is placed for either of the purposes set out in subsection (a) of this section shall be responsible for his proper care and training. The Board or its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed by the Board or its agents as long as the child shall remain within the State and until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 1; 1947, c. 609, s. 1.)

Editor's Note.—The 1947 amendment re-wrote this section.

§ 110-51. Bond required.—The State Board of Public Welfare may, in its discretion, require of a person, agency, association, institution, or corporation which brings or sends a child into the State with the written consent of the Board, as provided by § 110-50, a continuing bond in a penal sum not in excess of one thousand dollars (\$1000.00) with such conditions as may be prescribed and such sureties as may be approved by the State Board of Public Welfare. Said bond shall be made in favor of and filed with the State Board of Public Welfare with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the State. (1931, c. 226, s. 2; 1947, c. 609, s. 2.)

Editor's Note.—The 1947 amendment re-wrote this section.

§ 110-52. Consent required for removing child from State.—No child shall be taken or sent out of the State for the purpose of placing him in a foster home or in a child-caring institution without first obtaining the written consent of the State Board of Public Welfare. The foster home or child-caring institution in which the child is placed shall report to the Board at such times as the Board may direct as to the location and well-being of such child until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 3; 1947, c. 609, s. 3.)

Editor's Note.—The 1947 amendment re-wrote this section.

§ 110-53: Repealed by Session Laws 1947, c. 609, s. 4.

§ 110-54: Repealed by Session Laws 1943, c. 753, s. 2.

§ 110-55. **Violation of article a misdemeanor.**—Every person acting for himself or for an agency who violates any of the provisions of this article or who shall intentionally make any false statements to the State Board of Charities and Public Welfare shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7.)

§ 110-56. **Definitions.**—The term “Board” wherever used in this article shall be construed to mean the State Board of Charities and Public Welfare. The terms “he” and “his” and “him” wherever used in this article shall apply to a female as well as a male child. (1931, c. 226, s. 8.)

§ 110-57. **Application of article.**—None of the provisions of this article shall apply when a child is brought into or sent into, or taken out of, or sent out of the State, by the guardian of the person of such child, or by a parent, step-parent, grandparent, uncle or aunt of such child, or by a brother, sister, half-brother, or half-sister of such child, if such brother, sister, half-brother, or half-sister is twenty-one years of age or older. (1947, c. 609, s. 5.)

Chapter 111.

Commission for the Blind.

Article 1.

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ARTICLE 1.

Organization and General Duties of Commission.

§ 111-1. **Commission created; appointment by Governor; ex officio members.**—There shall be established a State commission, to be known as the North Carolina State Commission for the Blind, consisting of three persons, to be appointed by the Governor within thirty days after March 5, 1935. The superintendent of the State School for the Blind and the State supervisor of vocational rehabilitation shall be ex officio members of this Commission. (1935, c. 53, s. 1.)

§ 111-2. **Term of office.**—The full term of office of the members of this Commission, with the exception of the superintendent of the State School for the Blind and the State supervisor of vocational rehabilitation, shall be five years. The term of office of the said ex officio members shall be contemporaneous with

their tenure of office as superintendent of the State School for the Blind and State supervisor of vocational rehabilitation, respectively. Of the first Commission appointed, one member shall be appointed for a term of five years, one for a term of three years, one for a term of one year. At the expiration of the term of any member of the Commission, his successor shall be appointed for a term of five years. (1935, c. 53, s. 2.)

§ 111-3. Additional members of Commission for Blind; meeting place.—In addition to the members of the North Carolina State Commission for the Blind, as provided in § 111-1, there shall be three additional persons, to be appointed by the Governor within thirty days after March 20, 1937. The secretary of the State Board of Health, the Director of the North Carolina Employment Service, and the Commissioner of Public Welfare of North Carolina shall also be ex officio members of this Commission, and their term of office shall be contemporaneous with their tenure of office as secretary of the State Board of Health, Director of the North Carolina Employment Service, and Commissioner of Public Welfare. Of the three additional members, to be appointed by the Governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the Commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina State Commission for the Blind shall be held in the city of Raleigh. (1937, c. 285.)

§ 111-4. Register of State's blind.—It shall be the duty of this Commission to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the Commission to be of value. (1935, c. 53, s. 3.)

§ 111-5. Information and aid bureaus.—The Commission shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the Commission in disposing of the products of their home industry. (1935, c. 53, s. 4.)

§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.—The Commission may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may co-operate with shops already established. The Commission may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the Commission such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the Board, outside of the State. The Commission may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the North Carolina State Commission for the Blind under the provisions of this chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the North Carolina State Commission for the Blind deems wise, be given in direct money payments to the needy blind in

accordance with the provisions of §§ 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16.)

Editor's Note. — The 1937 amendment changed the last sentence.

§ 111-6.1. Rehabilitation center for the adult blind. — In addition to other powers and duties granted it by law, the North Carolina State Commission for the Blind is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The Commission shall make all rules and regulations necessary for this purpose and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the intent and purpose of such a rehabilitation center.

The State Commission for the Blind is hereby authorized to receive grants in aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina blind, under the provisions of the Act of Congress known as the Barden-Rehabilitation Act (volume fifty-seven, United States Statutes at Large, chapter one hundred and ninety). Blind persons, who have been residents of North Carolina for one year immediately preceding the date of application for rehabilitation services or who show an established intent to reside continuously in this State, may enjoy the benefits of this section, or any other related rehabilitation benefits under the said Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4.)

Editor's Note. — The 1951 amendment merely appeared in the first and second paragraphs. substituted the word "rehabilitation" in lieu of "pre-conditioning" where it for-

§ 111-7. Promotion visits. — The Commission may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Commission may deem advisable. (1935, c. 53, s. 6.)

§ 111-8. Investigations; eye examination and treatment. — It shall be the duty of this Commission to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and co-operate in any such measure for the State of North Carolina as may seem wise. The Commission may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified ophthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7.)

§ 111-8.1. Certain eye examinations to be reported to Commission. — Whenever, upon examination at a clinic, hospital, or other institution, or elsewhere by a physician, optometrist or other person examining eyes any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, the physician, the superintendent of such institution or other person who conducted or was in charge of the examination shall within thirty days report the results of the examination to the North Carolina State Commission for the Blind. (1945, c. 72, s. 3.)

§ 111-9. Officers and agents; annual report. — The Commission may

appoint such officers and agents as may be necessary to carry out the provisions of this chapter and their compensation shall be fixed within the limits of the annual appropriation by the Director of Personnel, but no person employed by the Commission shall be a member thereof. The annual report shall present a concise review of the work of the Commission for the preceding year, with such suggestions and recommendations for improving the conditions of the blind and preventing blindness as may seem expedient. (1935, c. 53, s. 8.)

§ 111-10. Compensation and expenses of Commission.—The members of the Commission shall receive no compensation for their services; but their traveling and other necessary expenses, incurred in the performance of their official duties, shall be audited by the State Auditor and paid by the Treasurer of the State, out of the moneys that may be appropriated therefor. (1935, c. 53, s. 9.)

§ 111-11. Qualifications of beneficiaries.—The beneficiaries of the Commission shall be persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. No person shall benefit from the provisions of this chapter unless he has been a resident of North Carolina for at least one year next preceding the receiving of such benefit. (1935, c. 53, s. 10; 1939, c. 124.)

§ 111-12. Work of State Board of Health unaffected.—Nothing herein shall be construed to in any way abridge the rights and privileges of the State Board of Health in the treatment of the blind, or in accumulating and disseminating information in reference to the blind and in the prevention of blindness. (1935, c. 53, s. 11.)

ARTICLE 2.

Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations.—The North Carolina State Commission for the blind shall be charged with the supervision of the administration of assistance to the needy blind under this article, and said Commission shall establish objective standards for personnel to be qualified for employment in the administration of this article, and said Commission shall make all rules and regulations as may be necessary for carrying out the provisions of this article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this article. (1937, c. 124, s. 2.)

§ 111-14. Application for benefits under article; investigation and award by county commissioners.—Any person claiming benefit under this article, shall file with the commissioners of the county in which he or she has a legal settlement an application in writing, in duplicate, upon forms prescribed by the North Carolina State Commission for the Blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the North Carolina State Commission for the Blind, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in

the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the North Carolina State Commission for the Blind. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the North Carolina State Commission for the Blind, not inconsistent with this article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1.)

Editor's Note.—The 1951 amendment inserted in the first sentence the words "or by an optometrist, whichever the individual may select." For comment on the enactment of this and the following sections and their application, see 15 N. C. Law Rev. 369.

§ 111-15. Eligibility for relief.—Blind persons having the following qualifications shall be eligible for relief under the provisions of this article:

(1) Whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this State able to provide for them who are legally responsible for their maintenance; and

(3) Who have been residents of the State of North Carolina one year immediately preceding the application; and

(4) Who are not inmates of any charitable or correctional institution of this State or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not publicly soliciting alms in any part of the State, and who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard the first fifty dollars (\$50.00) per month of earned income. (1937, c. 124, s. 4; 1951, c. 319, s. 3.)

Editor's Note. — The 1951 amendment added the proviso at the end of subsection (5).

§ 111-16. Application transmitted to Commission; notice of award; review by Commission.—Promptly after an application for aid is made to the board of county commissioners under this article the North Carolina State Commission for the Blind shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the North Carolina State Commission for the Blind and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the North Carolina State Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the North Carolina State Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within thirty days after the receipt of such notice the board of county commissioners shall transmit to the North Carolina State Commission for the Blind copies of

all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the North Carolina State Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the North Carolina State Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive secretary of the North Carolina State Commission for the Blind, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases, whether or not any appeal shall be taken by the applicant, the North Carolina State Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall, in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action, and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina State Commission for the Blind shall make any order increasing or decreasing the award allowing or disallowing the same, the applicant or the board of county commissioners shall have the right, within ten days from notice thereof, to have such order reviewed by the members of the North Carolina State Commission for the Blind. The procedure in such cases shall be as provided in this section on appeals to the Commission by the applicant. (1937, c. 124, s. 5.)

§ 111-17. Amount and payment of assistance; source of funds. — When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this article, as provided in § 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the North Carolina State Commission for the Blind, but in no case in an amount to exceed thirty dollars per month to be paid from county, State and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July first, one thousand nine hundred thirty-seven, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the North Carolina State Commission for the Blind, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this article and the total amount of such county's one-fourth part thereof required to be paid by such county. All such counties shall make an appropriation in their budgets which shall be found to be ample to pay their part of such payments and, at the time of levying other taxes, shall levy sufficient taxes for the payment of the same. This provision shall be mandatory on all of the counties in the State. Such taxes so levied shall be and hereby are declared to be for this special purpose and levied with the consent of the General Assembly. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the North Carolina State Commission for the Blind until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's one-fourth part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six per cent. and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the State shall cause to be transmitted to the State Treasurer one-fourth of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July first, one thousand nine hundred thirty-seven. The State Treasurer shall deposit said funds and credit same to the account of the North Carolina State Commission for the Blind to be employed in carrying out the provisions of this article. (1937, c. 124, s. 6.)

Cited in *Atlantic Coast Line R. Co. v. Beaufort County*, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

§ 111-18. Payment of awards.—After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina State Commission for the Blind, the North Carolina State Commission for the Blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina State Commission for the blind shall determine. Such payment shall be made by warrant of the State Auditor, drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the executive secretary of the North Carolina State Commission for the Blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure. (1937, c. 124, s. 7.)

§ 111-19. When applications for relief made directly to State Commission; transfer of residence.—If any person, otherwise entitled to relief under this article, shall have the residence requirements in the State of North Carolina, but no legal settlement in any one of the counties therein, his or her application for relief under this article shall be made directly to the North Carolina State Commission for the Blind, in writing, in which shall be contained all the facts and information sufficient to enable the said Commission to pass upon the merits of the application. Blank forms for such application shall be furnished by the North Carolina State Commission for the Blind. If the said Commission finds the applicant entitled to assistance within the rules and regulations prescribed by it, and consonant with the provisions of this article, relief shall be given to such person coming under the rules of eligibility to such extent as the North Carolina State Commission for the Blind may consider just and proper, but not in excess of the amounts specified in § 111-17. Payment of the benefits thus awarded, however, shall be made entirely out of the funds provided by the State, together with such funds which may be added thereto as federal grants in aid, and shall not be a charge upon the funds locally raised by taxation in the counties until such person shall have resided in some county for sufficient time to acquire a settlement therein; thereafter payments shall be made as in other cases.

Any recipient of aid to the blind who moves to another county in this State shall be entitled to receive aid to the blind in the county to which he has moved, and the board of county commissioners, or its authorized agent, of the county from which he has moved shall transfer all necessary records relating to the recipient to the board of county commissioners, or its authorized agent, of the county to which he has moved. The county from which the recipient moves shall pay the aid to such recipient for a period of three months following such removal,

not in excess of the amount paid before removal, and thereafter aid to such recipient shall be paid by the county to which such recipient has moved subject to the rules and regulations of the North Carolina State Commission for the Blind. (1937, c. 124, s. 8; 1947, c. 374.)

Editor's Note. — The 1947 amendment added the second paragraph.

§ 111-20. Awards subject to reopening upon change in condition.—All awards to needy blind persons made under the provisions of this article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The North Carolina State Commission for the Blind and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations biannually, or more often, as may be found necessary. The North Carolina State Commission for the Blind may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the North Carolina State Commission for the Blind, and shall be subject to the right of appeal and review, as provided in § 111-16. (1937, c. 124, s. 9.)

§ 111-21. Disqualifications for relief.—No aid to needy blind persons shall be given under the provisions of this article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged, and/or aid for the permanently and totally disabled. (1937, c. 124, s. 10; 1951, c. 319, s. 2.)

Editor's Note. — The 1951 amendment "and/or aid for the permanently and totally disabled."

§ 111-22. Beneficiaries not deemed paupers.—No blind person shall be deemed a pauper by reason of receiving relief under this article. (1937, c. 124, s. 11.)

§ 111-23. Misrepresentation or fraud in obtaining assistance.—Any person who shall obtain, or attempt to obtain, by means of a willful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred (\$500.00) dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this article. (1937, c. 124, s. 12.)

§ 111-24. Co-operation with federal Social Security Board; grants from federal government.—The North Carolina State Commission for the blind is hereby empowered and authorized and directed to co-operate with the federal Social Security Board, created under Title X of the Social Security Act,

approved August fourteenth, one thousand nine hundred thirty-five, in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this article, including the making of such reports in such form and containing such information as the federal Social Security Board may from time to time require, and comply with such regulations as said Board may from time to time find necessary to assure the correctness and verification of such reports.

The North Carolina State Commission for the Blind is hereby further empowered and authorized to receive grants in aid from the United States government for assistance to the blind and grants made for payment of cost of administering the State plan for aid to the blind, and all such grants so received hereunder shall be paid into the State treasury and credited to the account of the North Carolina State Commission for the Blind in carrying out the provisions of the article. (1937, c. 124, s. 13.)

§ 111-25. Acceptance and use of federal aid.—The Commission for the Blind may expend, under the provisions of the Executive Budget Act, such grants as shall be made for paying the cost of administering this chapter by the federal government under Title X of the Social Security Act. (1937, c. 124, s. 14.)

§ 111-26. Termination of federal aid.—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the Governor of the State of North Carolina has issued a proclamation duly attested by the Secretary of the State of North Carolina to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the State funds on hand shall be converted into the general fund of the State for such use as may be authorized by the Director of the Budget, and the county funds accumulated by the provisions of this article in the respective counties of the State shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

§ 111-27. Commission to promote employment of needy blind persons; vending stands on public property.—For the purpose of assisting blind persons to become self-supporting, the North Carolina State Commission for the Blind is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said Commission may co-operate with the federal government in the furtherance of the provisions of the Act of Congress known as the Randolph-Sheppard Bill (H. R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of Congress which may be hereafter enacted.

The board of county commissioners of each county and the commissions or officials in charge of various State and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any State, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the North Carolina State Commission for the Blind: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123.)

§ 111-27.1. Commission authorized to conduct certain business operations.—For the purpose of assisting blind persons to become self-supporting the North Carolina State Commission for the Blind is hereby authorized to carry

on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day by day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the State Commission for the Blind. All of the business operations under this law, however, shall be subject to regular audits by the State Auditor. (1945, c. 72, s. 2.)

§ 111-28. Commission authorized to receive federal, etc., grants for benefit of needy blind.—The North Carolina State Commission for the Blind is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the North Carolina State Commission for the Blind, to be used in carrying out the provisions of this law.

The North Carolina State Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in §§ 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The North Carolina State Commission for the Blind is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, non-residents, or transients, and co-operate with other agencies of the State and federal governments in the provision of such assistance and services and in the study of the problems involved.

The North Carolina State Commission for the Blind is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the State Commission for the Blind, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the State Commission for the Blind or the board of county commissioners or the county welfare department, or acquired in the course of the performance of official duties. (1939, c. 124; 1941, c. 186.)

§ 111-28.1. Commission authorized to co-operate with federal government in rehabilitation of blind.—The North Carolina State Commission for the Blind is hereby authorized and empowered to make the necessary rules and regulations to co-operate with the federal government in the furtherance of the provisions of the Act of Congress known as the Barden-Rehabilitation Act (Volume fifty-seven, United States Statutes at Large, chapter one hundred and ninety) providing for the rehabilitation of the blind. (1945, c. 72, s. 1.)

§ 111-29. **Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports.**—In addition to the powers and duties imposed upon the North Carolina State Commission for the Blind, the said Commission shall be and hereby is charged with the powers and duties hereinafter enumerated; that is to say:

(1) The North Carolina State Commission for the Blind is hereby authorized to expend such funds as are appropriated to it as an equalizing fund for aid to the needy blind for the purpose of equalizing the financial burden of providing relief to the needy blind in the several counties of the State, and equalizing the grants received by the needy blind recipients. Such amount shall be expended and disbursed solely for the use of the needy blind coming within the eligibility provisions outlined in chapter one hundred and twenty-four of the Public Laws of one thousand nine hundred and thirty-seven. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the North Carolina State Commission for the Blind, producing as far as possible a just and fair distribution thereof.

(2) The North Carolina State Commission for the Blind is hereby authorized to make such grants to the needy blind of the State as will enable said Commission to receive the maximum grants from the federal government for such purpose.

(3) The North Carolina State Commission for the blind is hereby authorized to work out plans with the Secretary of State for lending to needy blind lawyers volumes of the North Carolina reports in his custody that are unused or have become damaged. The Secretary of State is hereby authorized to lend such reports to the Commission for the Blind for relending to needy blind lawyers. Such reports may be recalled at any time by the Secretary of State upon giving fifteen days' written notice to the Commission for the Blind which shall remain responsible for said reports until they are returned. The Commission shall relend such reports only to blind lawyers, who, after an investigation by the Commission, are determined to have no income, or an income insufficient to purchase such reports. (1943, c. 600.)

§ 111-30. **Appointment of guardians for certain blind persons.**—If any indigent blind person, who is receiving any moneys available to the needy blind, is unable to manage his own affairs, and this fact is brought to the attention of the clerk of the superior court of the county where said indigent blind person resides by petition of a relative of said blind person, or other interested person, or by the chairman of the county commissioners or by the State Commission for the Blind, it shall be the duty of the clerk to set a day for hearing the facts in the matter and to notify all interested persons. The indigent blind person shall be present at the hearing in person, or by representation, and the clerk of the superior court shall inquire into his condition. The hearing and inquiry shall be conducted in the manner provided by the general guardianship laws of North Carolina. If, after the hearing, the clerk finds that such indigent blind person is unable to manage his own affairs, it shall be the duty of the clerk to appoint some discreet and solvent person to act as guardian for said indigent blind person to whom said moneys may be paid. No bond shall be required of, or fee paid to, the guardian where the amount of money received does not exceed fifty dollars (\$50.00) per month. Such person so designated shall use and faithfully apply said moneys for the sole benefit and maintenance of such indigent blind person. The person so designated shall give a receipt to the officer disbursing said moneys and the clerk, in his discretion, may require such person to render a periodic account of the expenditure of such moneys. (1945, c. 72, s. 4.)

Chapter 112.

Confederate Homes and Pensions.

Article 1.

Confederate Woman's Home.

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Article 2.

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ARTICLE 1.

Confederate Woman's Home.

§ 112-1. **Incorporation and powers of Association.**— Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Caro-

lina Confederate Soldiers: Provided, however, no such daughters of North Carolina Confederate Soldiers shall be admitted to said home after January 1, 1953.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1960. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121.)

Editor's Note.—The 1949 amendment re-wrote the last few lines of the first paragraph, and substituted “until January 1, 1960” for the words “for forty years” in the second sentence of the second paragraph.

§ 112-2. Board of directors appointed; officers and duties.—The powers conferred by this article shall be exercised by a board of directors, consisting of seven members, to be appointed by the Governor of the State and who shall hold office for the term of two years, and in case of a failure to appoint, the members of such board of directors shall hold their offices until their successors are appointed. The board of directors shall elect a president and a secretary, and the Treasurer of North Carolina shall be the Treasurer of the Woman's Confederate Home Association. The board of directors shall appoint such other officers, agents, or employees as they shall see fit, and prescribe the duties of such officers and employees; establish rules and regulations for the maintenance and government of the home, and have entire control and management of it; prescribe the rules for the admission of the inmates and their discharge, and take whatever action may be desirable in reference to the collection and disbursement of subscriptions, either to the home or to the needy Confederate women elsewhere in the State. The accounts of the officers and employees shall be duly audited and published and report thereof made as now required by law from the other State institutions. (1913, c. 62, s. 2; C. S., s. 5135.)

§ 112-3. Location of Home.—The board of directors shall locate the Confederate Woman's Home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the Home. (1913, c. 62, s. 2; C. S., s. 5136.)

§ 112-4. Advisory board of lady managers.—Mrs. Hunter Smith, Mrs. N. B. Mann, Mrs. T. L. Costner, Mrs. R. F. Dalton, Mrs. F. A. Woodard, Mrs. W. H. Mendenhall, Mrs. E. C. Chambers, Mrs. Charles S. Wallace, Mrs. M. O. Winstead, Mrs. Marshall Williams are appointed an advisory board of lady managers for a term of two years, whose duties it shall be to assist the directors in the equipment and management of the Home as they may be requested to do, shall solicit contributions for the Home and generally shall use all the powers given to and perform all the duties required of them by the board of directors. The successors in office of said lady managers shall be selected one from each congressional district in the State. All vacancies in said advisory board, whether from expiration of office or otherwise, shall, subject to the limitations herein set out respecting the way of selection, be filled by the board of directors. (1913, c. 62, s. 3; C. S., s. 5137.)

§ 112-5. Reversion of property.—If the land on which the said Home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this State, the same shall revert to the person or persons

donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the State; but in all cases of nonuser for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the State. (1913, c. 62, s. 4; C. S., s. 5138.)

§ 112-6. **Compensation of directors.**—The directors provided for in this article shall be entitled to their actual expenses incurred in attending the meetings of the board of directors since their appointment, and also in attending future meetings of the board, the same to be paid out of the funds of the Confederate Woman's Home. (1915, c. 206; C. S., s. 5139.)

ARTICLE 2.

Pensions.

Part 1. Pension Boards.

§ 112-7. **State Board; examination of applications.**—The Governor, Attorney General, and Auditor shall be constituted a State Board of Pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent by the county boards. Such applications as are approved by the State Board shall be paid by the Treasurer, upon the warrant of the Auditor. (1921, c. 189, s. 1; C. S., s. 5168(a).)

§ 112-8. **State Board to make rules.**—The State Board of Pensions is empowered to prescribe rules and regulations for the more certainly carrying into effect this article according to its true intent and purpose. (1921, c. 189, s. 2; C. S., s. 5168(b).)

§ 112-9. **Auditor to transmit lists to clerks of court; publication of list.**—The Auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post offices, as allowed by the State Board of Pensions. (1921, c. 189, s. 3; C. S., s. 5168(c); 1929, c. 296, s. 1.)

Editor's Note.—The 1929 amendment struck out the sentence "the auditor may oftener, a list of the pensioners on the pension roll," formerly appearing at the end of this section.

§ 112-10. **County board.**—The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the State Auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 4; C. S., s. 5168(d); 1929, c. 92, s. 1; 1933, c. 465, s. 1.)

Editor's Note.—The 1929 amendment inserted the words "or daughters" in this section, and the 1933 amendment made grandsons and granddaughters of veterans eligible for the board.

§ 112-11. **Compensation of members of the county board of pensions.**—Each member of the county board of pensions shall be entitled to two dollars a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners. (1903, c. 273, s. 19; Rev., s. 2783; C. S., s. 3913.)

§ 112-12. **Examination and classification by county board; certificate of disability.**—All persons entitled to pensions under this article, not now drawing pensions, shall appear before the county board of pensions for examination and classification in compliance with the provisions of this article: Provided, that all such as are unable to attend shall present a certificate from a creditable physician, living and practicing medicine in the community in which

the applicant resides, that the applicant is unable to attend. (1921, c. 189, s. 5; C. S., s. 5168(e); Ex. Sess. 1924, c. 106; 1941, c. 152, s. 1.)

Editor's Note. — The 1941 amendment struck out the words "on or before the first Mondays in February and July of each year," formerly appearing before the words "for examination". The 1924 amendment changed the clause which was stricken by the 1941 amendment.

§ 112-13. Annual revision of pension roll. — On the first Mondays of February and July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of ten days to the pensioner who is alleged not to be rightfully on the State pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list. (1921, c. 189, s. 6; C. S., s. 5168(f); Ex. Sess. 1924, c. 106.)

Editor's Note. — This section was "Monday" and inserting the words "February" amended in 1924 by adding the "s" to "Monday" and inserting the words "February and."

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-14. Persons disabled in militia service; their widows and orphans. — Every person who may have been disabled by wounds in the militia service of the State, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers. (R. C., c. 84; Code, s. 3472; Rev., s. 4990; C. S., s. 5147.)

§ 112-15. Blind or maimed Confederate soldiers. — All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive four hundred and twenty dollars a year. (1899, c. 619; 1901, c. 332, s. 5; Rev., s. 4991; 1907, c. 60; 1921, c. 189, s. 7; C. S., s. 5168(g); Ex. Sess. 1924, c. 83; 1925, c. 275, s. 6, subsec. 24.)

Editor's Note. — The 1925 amendment deleted the words "from the public treasury" formerly appearing immediately after the word "receive."

§ 112-16. Helpless or demented widows of Confederate soldiers. — Every widow of a Confederate soldier who married and was widowed prior to one thousand eight hundred and sixty-six and who has not remarried and who bore and raised legitimate child or children of the deceased Confederate soldier, and who has lost her mind, or become helpless, and is not confined in an asylum, or is not an inmate of any charitable institution, shall receive the same pay and in the same manner as blind Confederate soldiers. (1923, c. 3; C. S., s. 5168(h).)

§ 112-17. Repealed by Session Laws 1945, c. 699, s. 2.

§ 112-18. Classification of pensions for soldiers and widows. — There shall be paid out of the Treasury of the State, on the warrant of the Auditor, to every person who has been for twelve months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the War between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the War between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in § 112-17, who are

now disabled from any cause to perform manual labor, twelve hundred dollars (\$1200.00).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, four hundred and fifty-six dollars (\$456.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, six hundred dollars (\$600.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January first, eighteen hundred and eighty, and to such widows who were married to such soldiers subsequent to January first, eighteen hundred and eighty, and who are now on the pension rolls, by virtue of previous statutes, three hundred and twelve dollars (\$312.00). Provided, that the State Board of Pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year one thousand eight hundred and ninety-nine and who are now more than sixty years of age, as in the judgment of the said State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; C. S., s. 5168(j); Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; 1945, c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4.)

Editor's Note. — The 1929 amendment "Class A" under "Widows". And the added the proviso at the end of this section. The 1935 and 1937 amendments made changes in the paragraph entitled 1945 and 1949 amendments increased the various allowances.

§ 112-19. **Certain widows of Confederate soldiers placed on Class B pension roll.**—All widows of Confederate soldiers who have lived with such soldiers for a period of ten years prior to the death of such soldier, and where the death of the soldier occurred since the year one thousand eight hundred ninety-nine, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general State pension laws as modified hereby. (1937, cc. 181, 454.)

§ 112-20. **Persons not entitled to pensions.**—No person shall be entitled to receive the benefits of this article:

1. Who is an inmate of the Soldiers' Home at Raleigh;
2. Who is confined in an asylum or county home;
3. Who receives a pension from any other state or from the United States;
4. Who holds a national, State, or county office, which pays annually in salary or fees the sum of three hundred dollars (\$300);
5. Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged, or who was in service at the surrender shall be considered a deserter in the meaning of this section;
6. Who is receiving aid from the State under any act providing for the relief of soldiers who are blind or maimed;
7. Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds two thousand dollars (\$2,000), or who, having owned property in excess of two thousand dollars (\$2,000), has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, one thousand eight hundred and eighty-five: Provided, that the county board of pensions may place upon the pension roll, in

the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as two thousand dollars (\$2,000) or more for taxation, and who may appear to the board from special circumstances worthy to be placed upon the pension roll. (1921, c. 189, s. 10; C. S., s. 5168(k).)

§ 112-21. Removal from pension lists of persons eligible for old age assistance. — All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for old age assistance under the provisions of §§ 108-15 to 108-76, from and after the first day of June, one thousand nine hundred thirty-nine, shall not be entitled to any pension provided by the provisions of chapter 112, entitled "Confederate Homes and Pensions," and any acts of the General Assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, one thousand nine hundred thirty-nine, the county board of welfare in every county in this State shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for old age assistance under the provisions of §§ 108-15 to 108-76 without any applications being made by such persons for old age assistance as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have been made, the county board of welfare shall notify the county pension board in the county of such county board of welfare of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of welfare, and revision of the pension list as aforesaid, notify the State Board of Pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of welfare, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the State Board of Pensions, and such certification from the county board of welfare to the State Board of Pensions shall be sufficient authority for removal of such names from the pension list by the State Board of Pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amounts necessary for payment of awards for old age assistance shall be paid entirely out of State and federal funds.

In the event it is determined by the county board of welfare that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of welfare shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the State Board of Pensions, the State Board of Pensions shall certify the revised list of pensioners to the State Auditor and the State Auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the State Board of Pensions. (1937, c. 227; 1939, c. 102.)

Editor's Note.—The 1939 amendment re-wrote the section.

Part 3. Application for Pensions.

§ 112-22. **Forms provided by Auditor.**—The Auditor of the State shall provide a form of application (according to the terms of this article), and have the same printed and sent to the clerks of the superior court of the several counties of the State for use of applicants. (1921, c. 189, s. 11; C. S., s. 5168(1).)

§ 112-23. **Application by person, guardian or receiver.**—No soldier, officer, sailor, or widow shall be entitled to the benefits of this chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver. (1921, c. 189, s. 12; C. S., s. 5168(m).)

§ 112-24. **Applications by persons not on rolls.**—Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and regiment or battalion in which he served at the time of receiving the wound; the time and place of receiving the wound; whether he is holding an office in the State, United States, or county from which he is receiving the sum of three hundred dollars (\$300) in fees or salary; whether he is worth in his own right or in the right of his wife, property at its assessed value for taxation to the amount of two thousand dollars (\$2,000); whether he is receiving any aid from the State of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the State; and whether he is a citizen of the State of North Carolina. Such application shall be verified by the oath of the applicant made before anyone empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application, and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the Auditor of the State under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall accompany the certificate so sent to the Auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the Auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them. (1921, c. 189, s. 13; C. S., s. 5168(n).)

§ 112-25. **Time for forwarding certificate; Auditor to issue warrant.**—It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the Auditor of the State, immediately after the certificate required by § 112-24 is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the State Board of Pensions being satisfied of the truth and genuineness of the application, the Auditor shall issue his warrant on the State Treasurer for the same. (1921, c. 189, s. 14; C. S., s. 5168(o).)

§ 112-26. Subsequent certificate; suggestion of fraud.—After an application has once been passed upon and allowed by the county and State boards, it shall be necessary only for the applicant to file with the Auditor of State a certificate from the clerk of the superior court of the county in which the application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the Auditor's office, and that the applicant is alive, but still disabled, and a citizen of this State, and still entitled to the benefits of his article, which certificate may be passed upon by the State Board, upon suggestions of fraud, before the Auditor draws his warrant upon such certificate. (1921, c. 189, s. 15; C. S., s. 5168(p).)

Part 4. Payment of Pensions; Warrants.

§ 112-27. Payment of pensions in advance; acknowledgment of receipt of warrants.—Pensions are payable monthly in advance, and the State Auditor shall divide into twelve equal installments the yearly amount due each pensioner and shall transmit to the clerks of the superior court of the various counties warrants for the same on or before the first day of each calendar month, the installment then due. It shall be the duty of the clerk of the superior court to acknowledge to the Auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants. (1921, c. 189, s. 16; C. S., s. 5168(q); 1939, c. 187, s. 1.)

Editor's Note.—Prior to the 1939 amendment pensions were payable twice a year. of a pension payable in the future are not assignable. *Gill v. Dixon*, 131 N. C. 87, 42 S. E. 538 (1902).

Pension Not Assignable.—Installments
§ 112-28. Warrants payable to pensioner or order; indorsement; copy of power of attorney.—The Auditor shall issue his warrant payable to the pensioner, or order, and such warrants shall not be paid by the Treasurer without the indorsement of the payee or his duly appointed attorney in fact, specially authorized to make such indorsement; and if such indorsement is made by the attorney in fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or a justice of the peace or notary public of the county in which the payee resides shall be attached to the warrant. (1921, c. 189, s. 17; C. S., s. 5168(r); 1941, c. 152, s. 3.)

Editor's Note.—Prior to the 1941 amendment the indorsement of the payee was required to be officially attested.

Part 5. Funds Provided for Pensions.

§ 112-29. Limit and distribution of appropriation.—The State Auditor is authorized, empowered and directed to apportion, distribute and divide the money appropriated by the State for pensions, and to issue warrants to the several pensioners pro rata in their respective grades: Provided, that if the money appropriated by the General Assembly for the Confederate soldiers, widows and servants is more than enough to pay them the amounts mentioned in this chapter, or if for any other cause, after paying the Confederate soldiers, widows and servants the amount stipulated in their respective grades as set out in this chapter, there should be an excess of the money appropriated for the first year, then the balance in the fund so appropriated for the first year shall revert and supplement the fund appropriated for the second year of the biennium: Provided, that if any moneys herein appropriated for the purposes aforesaid, shall not be needed to pay the Confederate soldiers, widows and servants the amounts stipulated in their respective grades, then such moneys shall be paid by the State Board of Pensions into the treasury and become a part of the general

fund appropriated by the State for other purposes: Provided, that no greater amount shall be paid out under this chapter than is appropriated under the General Appropriation Maintenance Act. (1921, c. 189, s. 20; C. S., s. 5168(u); 1927, c. 96, s. 4.)

Legislative Right. — It is the exclusive right of the legislature to determine and declare by, whom and how the indigent of the State entitled to support shall be as-

certained and from what fund and by whom allowances for their support shall be made. *Board v. Commissioners*, 113 N. C. 379, 18 S. E. 661 (1893).

§ 112-30. Increase by counties; special tax. — The county commissioners of each county in the State are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents on the hundred dollars valuation of property and six cents on each taxable poll for the purpose of increasing the pensions of Confederate soldiers and widows.

Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

The amount collected under this section shall be disbursed by the county commissioners pro rata to the various pensioners in such county as shown by the State pension list for that county. (1921, c. 189, s. 21; C. S., s. 5168(v).)

Local Modification.—Cumberland: 1907, c. 555.

Constitutionality.—Whether this section be regarded as general or special, it meets the requirements of Article V, section 6, and its efficacy is not impaired by this section of the Constitution. It is a familiar principle that existing statutes not ex-

pressly or impliedly repealed by an amendment to the Constitution remain in full force and effect, and that a statute will not be declared void unless the breach of the Constitution is so manifest as to leave no room for reasonable doubt. *Brown v. Jennings*, 188 N. C. 155, 124 S. E. 150 (1924).

Part 6. Miscellaneous Provisions.

§ 112-31. Officer failing to perform duties.—Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court. (1921, c. 189, s. 22; C. S., s. 5168(w).)

§ 112-32. Speculation in pension claims a misdemeanor.—Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor or widow of a deceased soldier or sailor, allowed under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both in the discretion of the court. (1921, c. 189, s. 23; C. S., s. 5168(x).)

Pension Not Assignable. — Installments of a pension payable in the future are not assignable. *Gill v. Dixon*, 131 N. C. 87, 42 S. E. 538 (1902).

§ 112-33. County payment of burial expenses. — Whenever in any county of this State a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding thirty dollars (\$30), to be applied toward defraying the burial

expenses of such deceased pensioner or widow. (1921, c. 189, s. 24; C. S., s. 5168(y).)

County Liable for Expenses.—This section requires the amount stated to be paid by the board of commissioners of the county of the pension roll on which the

name of the pensioner appears, irrespective of residence. *Hannah v. Board*, 176 N. C. 395, 97 S. E. 160 (1918).

§ 112-34. **State payment of burial expenses.**—Whenever in any county of this State a Confederate pensioner on the pension roll shall die, and such fact has been determined by the State Auditor, the State Auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a State warrant in the amount of one hundred dollars (\$100.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to old age assistance under the provisions of § 112-21: Provided further, that this section shall apply to persons who otherwise would be entitled to pensions but who are not on pension roll at time of death because of being admitted to county home, county institution or State institution. (1939, c. 187, s. 2; 1941, c. 152, s. 4; 1949, c. 1018.)

Editor's Note. — The 1941 amendment added the first proviso, and the 1949 amendment added the second proviso.

§ 112-35. **Peddling without license.** — All ex-Confederate soldiers who are without means of support other than their manual labor, and who are incapacitated to perform manual labor for any reason other than by their vicious habits, and now citizens of this State, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this State without a license therefor. Before any soldier shall be entitled to the benefits of this section he shall make application to the county board of pensioners of the county of which he is a resident, and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the War between the States, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of two thousand dollars (\$2,000) in his own name or in the name of his wife, deeded to her by him since the first day of March, one thousand nine hundred and two. (1921, c. 189, s. 25; C. S., s. 5168(z).)

Cross Reference.—As to exemption from jury duty, see § 9-19.

§ 112-36. **Taking fees for acknowledgments by pensioners.**—It shall be unlawful for any clerk of the superior court, notary public or any magistrate to charge any Confederate pensioner or the widow of such Confederate pensioner receiving a pension from the State of North Carolina for taking acknowledgments in connection with pension papers.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1925, c. 68.)

§ 112-37. **Officers required to check roll of pensioners with record of vital statistics.**—It shall be the duty of the register of deeds and the clerk of the court of each county in the State of North Carolina to check the roll of pensioners furnished the clerks of the court of the various counties of the State, with the record of vital statistics in the office of the register of deeds, within ten days after receipt of the pension roll, which roll shall be furnished by the State Auditor on or before October fifteenth and April fifteenth of each year,

and certify under their hands and seals of their office, the names of all deceased pensioners with dates of their death, whose names appear upon the pension roll, to the State Auditor. The State Auditor at the time of furnishing the pension rolls to the register of deeds and clerk of the superior court of each county, as herein provided, shall also furnish copies of said pension rolls to the State Registrar of Vital Statistics, who shall cause the same to be checked against the vital statistics records in his office and certify to the State Auditor the names of all persons appearing on said pension rolls, which the records in his office show to be deceased, together with the dates of their death. (1931, c. 144.)

Chapter 113.

Conservation and Development.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DE- VELOPMENT.

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SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

ARTICLE 1.

Organization and Powers.

§ 113-1. **Meaning of terms.**—In this article, unless the context otherwise requires, the expression “department” means the Department of Conservation and Development; “board” means the Board of Conservation and Development; and “director” means the Director of Conservation and Development. (1925, c. 122, s. 3.)

§ 113-2. **Department created.**—There is hereby created and established a department to be known as the “Department of Conservation and Development,” with the organization, powers and duties hereafter defined in this article. (1925, c. 122, s. 2.)

§ 113-3. **Duties of the Department.**—It shall be the duty of the Department, by investigation, recommendation and publication, to aid:

(a) In the promotion of the conservation and development of the natural resources of the State;

(b) In promoting a more profitable use of lands, forests and waters;

(c) In promoting the development of commerce and industry;

(d) In co-ordinating existing scientific investigations and other related agencies in formulating and promoting sound policies of conservation and development; and

(e) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State. (1925, c. 122, s. 4.)

Cross References. — See note under § 113-8. For authority of State Board of Education to convey or lease marsh and swamp lands to Department of Conservation and Development, see §§ 146-99 through 146-101. As to wildlife resources law, see §§ 143-237 through 143-254.

§ 113-4. **Board of Conservation and Development.**—The control and management of the department shall be vested in a board to be known as the “Board of Conservation and Development,” to be composed of fifteen members. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45.)

§ 113-5. **Appointment and terms of office of Board.**—On May first, one thousand nine hundred and forty-five, the Governor shall appoint fifteen (15) persons to be members of the Board of Conservation and Development, five of whom shall serve for a term of office of two years and until their successors are appointed and qualified. Upon the expiration of their term of office, their successors shall be named for a term of six years and until their successors are appointed and qualified. Five of said persons shall be named for a term of four years and until their successors are appointed and qualified. At the end of their

term of office, their successors shall be named for a term of six years and until their successors are appointed and qualified. Five of said persons shall be named for a term of six years and until their successors are appointed and qualified. At the end of their term of office, their successors shall be named for a term of six years and until their successors are appointed and qualified. Any vacancy occurring in the membership of said Board because of death, resignation, or otherwise shall be filled by the Governor for the unexpired term of such member. In making the appointments, the Governor shall take into consideration the functions and activities of the Board and in selecting the members shall give, as nearly as possible, proportionate representation to each and all of such functions and activities of the Department. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1.)

Editor's Note.—The 1945 amendment rewrote this section.

§ 113-6. Meetings of the Board.—The said Board may meet at least four times each year; one of said meetings to be held in Raleigh during the month of January and one in July at Morehead City, and the other two meetings to be held at a date and place to be fixed by the Board, and it may hold such other meetings as may be deemed necessary by the Board for the proper conduct of the business of the Department. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 2; 1947, c. 699.)

Editor's Note.—Prior to the 1945 amendment only two meetings a year were required, and no place of meeting was designated.

The 1947 amendment changed the fourth word of the section from "shall" to "may."

§ 113-7. Compensation of Board.—The members of the Board shall receive not more than seven dollars per diem and actual travel expenses while in attendance on Board meetings or while engaged in the business of the Department. (1925, c. 122, s. 8; 1927, c. 57, s. 3; 1941, c. 45; 1951, c. 408.)

Editor's Note. — The 1951 amendment raised the per diem from five to seven dollars.

§ 113-8. Powers and duties of the Board.—The Board shall have control of the work of the Department, and may make such rules and regulations as it may deem advisable to govern the work of the Department and the duties of its employees.

It shall make investigations of the natural, industrial and commercial resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in § 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, with recommendations and plans for promoting their more profitable use, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing the laws relating to all fish.

It shall make investigations of the existing conditions of trade, commerce and industry in the State, with the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of these interests.

The Board may take such other measures as it may deem advisable to obtain

and make public a more complete knowledge of the State and its resources, and it is authorized to co-operate with other departments and agencies of the State in obtaining and making public such information.

It shall be the duty of the Board to arrange and classify the facts derived from the investigations made, so as to provide a general source of information in regard to the State, its advantages and resources.

The Board may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department of Conservation and Development, and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department. (1925, c. 122, s. 9; 1927, c. 57; 1947, c. 118.)

Editor's Note. — The 1947 amendment added the last paragraph.

Session Laws 1945, c. 524, authorized the maintenance of one or more smallmouth

bass fish hatcheries and sub-rearing stations.

For subsequent law relating to fish, see §§ 143-237 through 143-254.

§ 113-8.1. Application to use waters for irrigation; investigation and approval of plan and survey.—Any person, firm, or corporation utilizing waters of North Carolina taken from the streams, rivers, creeks or lakes of the State in such an amount as to substantially reduce the volume or flow thereof for the purpose of irrigation shall before utilizing this resource in this manner make application to the Director of the Department of Conservation and Development for a permit for such use. Such person, firm, or corporation shall file with the Department of Conservation and Development a proposed irrigation plan and survey. The Director of Conservation and Development is hereby authorized to investigate such a plan as to safety and public interest and to approve plans and specifications and issue permits. (1951, c. 1049, s. 1.)

§ 113-9. Director of Conservation and Development.—The Governor shall appoint a suitable person as Director of Conservation and Development, who shall have charge of the work of the Department, under the supervision of the Board. The Director shall serve for such time as the Governor may designate in his appointment, not to exceed, however, the term of office of the Governor making the appointment, and until his successor is appointed and qualified. (1925, c. 122, s. 12.)

§ 113-10. Duties of the Director.—It shall be the duty of the Director, under the supervision of the Board and under such rules and regulations as the Board may adopt, to make, or cause to be made, examinations and surveys of the economic and natural resources of the State and investigations of its industrial and commercial enterprises and advantages, and to perform such other duties as the Board may prescribe in carrying out the objects of the Department. (1925, c. 122, s. 13.)

§ 113-11. Compensation of the Director.—The Director shall receive an annual salary to be fixed by the Governor not to exceed the sum of six thousand dollars. (1905, c. 542, ss. 2, 3; Rev., s. 2757; C. S., s. 6122(r); 1925, c. 122, s. 14.)

§ 113-12. Assistants.—The Director shall appoint, subject to the approval of the Board, such experts and assistants as may be found necessary to enable him to carry on successfully the work of the Department, among whom he may appoint, subject to the approval of the Board and as may be found necessary, a State Geologist and a State Forester. To the State Forester and the State Geologist such duties may be assigned by the said Director, subject to the approval

of the Board, as may be desired, including those heretofore exercised by those officers so designated. (1925, c. 122, s. 15.)

§ 113-13. Power to examine witnesses.—The Board, or the Director, is authorized, in the performance of their duties, to administer oaths and to subpoena and examine witnesses. (1925, c. 122, s. 10.)

§ 113-14. Reports and publications.—The Board shall prepare a report to be submitted by the Governor to each General Assembly showing the nature and progress of the work and the expenditures of the Department.

The Board may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such reports and information shall be published and distributed as the Board may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11.)

§ 113-15. Advertising of State resources and advantages.—It is hereby declared to be the duty of the Department of Conservation and Development to map out and to carry into effect, under the direction and with the approval of the Director of the Budget, a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160.)

§ 113-16. Co-operation with agencies of the federal government.—The Board is authorized to arrange for and accept such aid and co-operation from the several United States government bureaus and other sources as may assist in completing topographic surveys and in carrying out the other objects of the Department.

The Board is further authorized and directed to co-operate with the Federal Power Commission in carrying out the rules and regulations promulgated by that Commission; and to act in behalf of the State in carrying out any regulations that may be passed relating to water powers in this State other than those related to making and regulating rates. The provisions of this section are extended to apply to co-operation with authorized agencies of other states. (1925, c. 122, s. 18; 1929, c. 297, s. 2.)

§ 113-17. Agreements, negotiations and conferences with federal government.—The Department of Conservation and Development is delegated as the State agency to represent North Carolina in any agreements, negotiations, or conferences with authorized agencies of adjoining or other states, or agencies of the federal government, relating to the joint administration or control over the surface or underground waters passing or flowing from one state to another: Provided, that in all matters relating to pollution of said waters the Department and the State Board of Health, acting jointly, are hereby designated as the official agency under the provisions of this section. (1929, c. 297, s. 1.)

§ 113-18. Department authorized to receive funds from Federal Power Commission.—All sums payable to the State of North Carolina by the Treasurer of the United States of America under the provisions of section seventeen and other sections of the Federal Water Power Act shall be paid to the account of the State Department of Conservation and Development as the authorized agent of the State for receipt of said payments. Such sums shall be used by the Department of Conservation and Development in prosecuting in-

vestigations for the utilization and development of the water resources of the State. (1929, c. 288.)

§ 113-19. Co-operation with other State departments.—The Board is authorized to co-operate with the North Carolina Utilities Commission in investigating the water powers in the State, and to furnish the Utilities Commission such information as is possible regarding the location of the water-power sites, developed water powers, and such other information as may be desired in regard to water power in the State; the Board shall also co-operate as far as possible with the Department of Labor, the State Department of Agriculture, and other departments and institutions of the State in collecting information in regard to the resources of the State and in preparing the same for publication in such manner as may best advance the welfare and improvement of the State. (1925, c. 122, s. 16; 1927, c. 57, s. 1; 1931, c. 312; 1933, c. 134, s. 8.)

§ 113-20. Co-operation with counties and municipal corporations.—The Board is authorized to co-operate with the counties of the State in any surveys to ascertain the natural resources of the county; and with the governing bodies of cities and towns, with boards of trade and other like civic organizations, in examining and locating water supplies and in advising and recommending plans for other municipal improvements and enterprises. Such co-operation is to be conducted upon such terms as the Board may direct. (1925, c. 122, s. 17.)

§ 113-21. Co-operation of counties with State in making water resource survey.—The board of county commissioners of any county of North Carolina is authorized and empowered, in their discretion, to co-operate with the Department of Conservation and Development or other association, organizations, or corporation in making surveys of any of the natural resources of their county, and to appropriate and pay out of the funds under their control such proportional part of the cost of such survey as they may deem proper and just. (1921, c. 208; 1925, c. 122, s. 4.)

§ 113-22. Control of State forests.—The Board and Director shall have charge of all State forests, and measures for forest fire prevention. (1925, c. 122, s. 22.)

§ 113-23. Control of Mount Mitchell Park and other State parks.—The Board shall have the control and management of Mount Mitchell Park and of any other parks which have been or may be acquired by the State as State parks. (1925, c. 122, s. 23.)

Cross Reference.—For other sections relating to Mount Mitchell Park, see §§ 100-11 through 100-15.

§ 113-24. Protection of waterfowl food growing in public waters.—The Director of the State Department of Conservation and Development shall have absolute control and authority over all the aquatic plant foods or other waterfowl food growing in the public waters of North Carolina. None of same shall be sold, transported or shipped from the State except by permission in writing obtained from the Director of the State Department of Conservation and Development. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned not less than ninety (90) days nor more than six (6) months, or both such fine and imprisonment, in the discretion of the court. (1935, c. 135; 1941, c. 205.)

§ 113-25. Notice to Department before beginning business of manufacturing products from mineral resources of State.—Every person, firm

or corporation engaging in the manufacture or production of any product from any natural resources, classified as mineral products, shall before beginning such operation, or if already engaged in such business, within ninety days after March 9, 1927, notify the Department of its intention to begin or continue such business, and also notify said Department of the product or products it intends to produce.

Every person, firm or corporation now engaged or hereafter engaging in the manufacture or production of any product from any natural resources of the State classified as mineral products, shall notify the Department when such person, firm or corporation shall discontinue such manufacture or production.

Any person, firm or corporation failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than twenty-five dollars and not less than five dollars, in the discretion of the court. (1927, c. 258.)

§ 113-26. Department authorized to dispose of mineral deposits belonging to State.—The State Department of Conservation and Development is fully authorized and empowered to sell, lease, or otherwise dispose of, any and all mineral deposits belonging to the State of North Carolina which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State; and the said Department of Conservation and Development is authorized and empowered to convey or lease the right to such person, or persons, as it may, in its discretion, determine to take, dig and remove from such bottoms such mineral deposits found therein belonging to the State of North Carolina as may be sold or leased, or otherwise disposed of to them by the said Department. The Department is authorized, in its discretion, to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the said Department and to the best interest of the State of North Carolina: Provided, however, that before any such sale, lease, or contract is made the same shall be approved by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation, and subject to such other terms and conditions as may be imposed by the said Department.

All of the proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Conservation and Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including therein any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 385.)

§ 113-26.1. Bureau of Mines.—The Governor and the Council of State are hereby authorized, in their discretion and at such times as the development of the mineral resources and the expansion of mining operations in the State justify and make reasonably necessary, to create and establish as a part of the Department of Conservation and Development a Bureau of Mines, to be located in the western part of the State, with a view to rendering such aid and assistance to mining developments in this State as may be helpful in this expanding industry, and to allocate from the contingency and emergency fund such funds as may reasonably be necessary for the establishment and operation of such Bureau of Mines.

Upon the creation and establishment of such Bureau of Mines as herein authorized, the same shall be operated under such rules and regulations as may be adopted by the Board of Conservation and Development. (1943, c. 612.)

§ 113-27. **Investigation of coasts, ports and waterways of State.**—The Department is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to co-operate with agencies of the federal and State government and other political subdivisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department to represent the State in connection with such duties. (1931, cc. 139, 266; 1937, c. 434.)

§ 113-28. **Reimbursement of government for expense of emergency conservation work.**—When and if, upon the sale of State land or its products, the Director of Conservation and Development determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an Act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other purposes" approved March thirty-first, one thousand nine hundred and thirty-three, one-half of such profit from such sale of land, or one-half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States government for monies expended by it under such act, for the work so done, to the extent and at the rate of one dollar per man per day, for the time spent in such work, but not exceeding in the aggregate three dollars per acre. The Director of Conservation and Development shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the Department of Conservation and Development, or paid over to it by any other authorized agency making the sale, to be so retained by such Department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the Department of Conservation and Development is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said Department of Conservation and Development as now authorized and directed by law. This section shall not be construed to authorize the sale of State lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such Act of Congress. (1935, c. 115.)

ARTICLE 1A.

Special Peace Officers.

§ 113-28.1. **Designated employees commissioned special peace officers by Governor.**—Upon application by the Director of the Department of Conservation and Development, the Governor is hereby authorized and empowered to commission as special peace officers such of the employees of the Department of Conservation and Development as the Director may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development. Such employees shall receive no additional compensation for performing the duties of special peace officers under this article. (1947, c. 577.)

§ 113-28.2. **Powers of arrest.**—Any employee of the Department of Conservation and Development commissioned as a special peace officer shall have

the right to arrest with warrant any person violating any law, rule or regulation on or relating to the State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development, and shall have power to pursue and arrest without warrant any person violating in his presence any law, rule or regulation on or relating to said parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development. (1947, c. 577.)

§ 113-28.3. **Bond required.**—Each employee of the State Department of Conservation and Development commissioned as a special peace officer under this article shall give a bond with a good surety, payable to the State of North Carolina in a sum not less than one thousand dollars (\$1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Insurance Commissioner, and copies of the same, certified by the Insurance Commissioner, shall be received in evidence in all actions and proceedings in this State. (1947, c. 577.)

§ 113-28.4. **Oaths required.**—Before any employee of the Department of Conservation and Development commissioned as a special peace officer shall exercise any power of arrest under this article, he shall take the oaths required of public officers before an officer authorized to administer oaths. (1947, c. 577.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29. **Policy and plan to be inaugurated by Division of Forestry.**—The Department of Conservation and Development through the Division of Forestry shall inaugurate the following policy and plan looking to the co-operation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such co-operation with landowners and public agencies as may be available:

a. The extension of the forest fire prevention organization to all counties in the State needing such protection.

b. To co-operate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

c. To furnish trained and experienced experts in forest management, to inspect private forest lands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

d. To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

e. To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department of Conservation and Development as State demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1.)

§ 113-30. **Use of lands acquired by counties through tax foreclosures as demonstration forests.**—The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department of Conservation and Development title to such tax delinquent lands

as may have been acquired by said counties under tax sale and as in the judgment of the State Forester may be suitable for the purposes named in § 113-29, paragraph "e". (1939, c. 317, s. 2.)

§ 113-31. Procedure for acquisition of delinquent tax lands from counties.—In the carrying out of the provisions of § 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department of Conservation and Development a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the State Forester of the Department of Conservation and Development shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in § 113-30, request shall be made through the Director of said Department to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined. (1939, c. 317, s. 3.)

§ 113-32. Purchase of lands for use as demonstration forests.—Where no suitable tax-delinquent lands are available and in the judgment of the Department of Conservation and Development the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in §§ 113-29 to 113-33 shall allow the Department of Conservation and Development to acquire land under the right of eminent domain. (1939, c. 317, s. 4.)

§ 113-33. Forest management appropriation.—Necessary funds for carrying out the provisions of §§ 113-29 to 113-33 shall be set up in the regular budget as an item entitled "forest management." (1939, c. 317, s. 5.)

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States.—The Governor of the State is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the State, the same to be held, protected, and administered by said Board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State park activities with which the Department of Conservation and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this section can be exercised, the ap-

proval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this section shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. Such State forests shall be subject to county taxes assessed on the same basis as are private lands, to be paid out of money in the State treasury not otherwise appropriated. The Department of Conservation and Development of the State of North Carolina in lieu of payment to any county of the ad valorem taxes provided for above is authorized and empowered in its discretion to pay to any county in which is located any State forest, as a severance tax, such percentage or part of the net proceeds of revenues received and collected by such said Department, as may be determined by them, and as agreed upon by them and the board of county commissioners of any county in which such State forest is located, as shall be approximately equal to the ad valorem taxes levied on the property at the time such property was acquired by the State from the cutting and removal of timber and pulpwood from State forests located in the county to which the payment is made. Such payments can be made to such counties on lands owned by the State and used for State forests, or lands leased by the State from which it has the right to cut and remove such timber and pulpwood: Provided, if removed from any State forest leased or acquired from the federal government, the terms of the lease or instrument of acquisition from the federal government pertaining to such matters shall be in all respects complied with. The Department of Conservation and Development is required to determine by resolution adopted by them, and as agreed upon by them and the board of county commissioners of any county in which there is located any leased State forest, the years which such severance taxes in lieu of ad valorem taxes shall be paid and be in effect, notice of which shall be given to the county or counties concerned therein prior to the first day of January of the year such severance taxes shall be substituted for such ad valorem taxes.

The Board of Conservation and Development is further authorized and empowered to accept as gifts to the State of North Carolina such forest and sub-marginal farm land acquired by said federal government as may be suitable for the purpose of creating and maintaining State-controlled forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into long-time leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of long-time public use, supplemented by such necessary appropriations as may be made by the General Assembly. The Department of Conservation and Development is further empowered to segregate State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas. (1915, c. 253, s. 1; C. S., s. 6124; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; 1951, c. 443.)

Local Modification.—Swain: 1951, c. 443.

Editor's Note. — The 1935 amendment added the second paragraph. The 1941 amendment inserted the fourth and fifth sentences of the first paragraph, together with the proviso at the end of the fifth sentence. And the 1951 amendment added the

last three sentences to the first paragraph.

The word "section" has been substituted for "sentence" at two places in the proviso to the fifth sentence of the first paragraph. This change would seem to make the proviso conform to the legislative intent.

§ 113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.—Tim-

ber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. Said Department shall have authority to establish on these or other State lands under its charge forest nurseries for the growing of trees for planting on such State forest lands and to procure or acquire tree seeds for nursery for forest use. Such planting stock as is not required in the State forests may be sold at not less than cost to landowners within the State for planting purposes, but all such planting shall be done under plans approved by the Department. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars or by imprisonment for not exceeding thirty days.

The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

(a) The operation and use of such boats or other craft on the surface of State lakes as may be permitted under its own regulations,

(b) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on State lakes under its own regulations,

(c) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws and regulations are complied with.

The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Board of Conservation and Development shall deem to be in the public interest. The Department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized which regulations shall have the force and effect of law, and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not exceeding thirty days. (1931, c. 111; 1947, c. 697.)

Editor's Note. — The 1947 amendment added all of the section beginning with the second paragraph.

§ 113-36. Application of proceeds from sale of products.—All money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Board of Conservation and Development; and such money shall be expended in carrying out the purposes of this article and of forestry in general, under the direction of the Board of Conservation and Development. (1915, c. 253, s. 2; C. S., s. 6125; 1925, c. 122, s. 22.)

§ 113-37. Legislative authority necessary for payment.—Nothing in this article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly. (1915, c. 253, s. 2½; C. S., s. 6126.)

§ 113-38. Distribution of funds from sale of forest lands.—All funds paid by the National Forest Commission, by authority of Act of Congress, approved May 23, 1908 (Thirty-five Stat., two hundred sixty), for the counties of

Avery, Buncombe, Burke, Craven, Haywood, Henderson, Jackson, Macon, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forest lands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed. (Ex. Sess. 1920, c. 6; 1921, c. 179, s. 17; C. S., s. 6126(a); 1933, c. 537, s. 1; 1939, c. 152; 1943, c. 527.)

Editor's Note. — The 1943 amendment made this section applicable to Craven County.

§ 113-39. License fees for hunting and fishing on government-owned property unaffected.—No wording in § 113-113, or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2.)

§ 113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition.—The Department of Conservation and Development is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for State forests or State parks. (1935, c. 430, s. 1.)

§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules and regulations.—When lands are acquired or leased under § 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of §§ 113-40 to 113-44. (1935, c. 430, s. 2.)

§ 113-42. Disposition of revenues received from lands acquired.—All revenues derived from lands now owned or later acquired under the provisions of §§ 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty per cent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty per cent shall be paid into the school fund to be used in the county or counties in which lands are located. (1935, c. 430, s. 3.)

§ 113-43. State not obligated for debts created hereunder.—Obligations for the acquisition of land incurred by the Department under the authority of §§ 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State. (1935, c. 430, s. 4.)

§ 113-44. Disposition of lands acquired.—The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction

when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests and State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into. (1935, c. 430, s. 5.)

ARTICLE 3.

Private Lands Designated as State Forests.

§ 113-45. **Governor may designate State forests.**—The Governor of the State, upon the written application of any owner or owners of wooded lands situated in North Carolina above contour line two thousand feet, may at his discretion declare the lands of such owner or owners, or such parts thereof as he may deem advisable, a "State forest of North Carolina." (1909, c. 89, s. 1; C. S., s. 6127.)

§ 113-46. **Publication of declaration.**—The declaration of the Governor shall be published, at the expense of the applicant, in three consecutive issues of any newspaper published in the county or counties wherein the lands declared a State forest reserve are situated, if there be one; if no paper is published in the county or counties, then in a paper published in an adjoining county; and after such publication the said lands shall be a State forest of North Carolina for the term of thirty years. (1909, c. 89, s. 2; C. S., s. 6128.)

§ 113-47. **Duty of the landowners.**—The owner or owners, when making such written application, shall agree in writing to treat in a conservative manner the proposed State forest described in the application, such manner to be in accordance with a working plan approved by the Department of Conservation and Development; and the owner or owners of such proposed State forest, when making such application, shall agree to pay annually into the school fund of the county wherein such proposed State forest or a part thereof is situated one-half cent for every acre of such proposed State forest situated within the county; and if the owner or owners thereafter shall fail to make such annual payment, then the declaration of the Governor establishing the said State forest shall be null and void to all intents and purposes. (1909, c. 89, s. 3; C. S., s. 6129; 1925, c. 122, s. 22.)

§ 113-48. **State forest rangers appointed.**—The Governor shall appoint at his discretion, with the approval of the commissioners of the county wherein a State forest is situated, as State forest rangers such a man or men over twenty-one years of age as may be designated for appointment by the owner or owners of such State forest. Such State forest rangers are to receive no compensation other than that which the owner or owners of the State forest may pay to them. (1909, c. 89, s. 4; C. S., s. 6130; 1951, c. 575.)

Editor's Note. — The 1951 amendment substituted "rangers" for "wardens".

§ 113-49. **Powers of State forest rangers.**—The State forest rangers may make arrest on sight, without warrant, for any criminal offense, as provided in the chapter on Criminal Law for setting fire to woods, for camp-fires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the State forest. They shall safeguard against trespass, and notably against fire, in the State forest for which they have been appointed; and, as far as the enforcement of the provisions of this article is concerned, the State forest rangers shall have all the powers, privileges, and protection otherwise had by

sheriffs under any law now in force. (1909, c. 89, s. 5; C. S., s. 6131; 1951, c. 575.)

Editor's Note. — The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

Carolina, see 15 N. C. Law Rev. 101.

Stated in *Alexander v. Lindsey*, 230 N. C. 663, 55 S. E. (2d) 470 (1949).

For article on the law of arrest in North

§ 113-50. **Fines imposed.**—The minimum fine for any offense mentioned in the preceding section committed within any State forest shall be fifty dollars if within the jurisdiction of the superior court, and twenty-five dollars if within the jurisdiction of a justice of the peace. (1909, c. 89, s. 6; C. S., s. 6132.)

ARTICLE 4.

Protection against Forest Fires; Fire Control.

§ 113-51. **Board of Conservation and Development.**—The State Board of Conservation and Development may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State. (1915, c. 243, s. 1; C. S., s. 6133; 1925, c. 122, s. 22.)

§ 113-52. **State Forester and forest rangers.**—The forester of the Department of Conservation and Development, who shall be called State Forester, and shall be ex officio State forest ranger, may appoint, with the approval of the Board of Conservation and Development, one county forest ranger and one or more deputy forest rangers in each county of the State in which after careful investigation the amount of forest land and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization. (1915, c. 243, s. 2; C. S., s. 6134; 1925, c. 106, s. 1; 1925, c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; 1951, c. 575.)

Cross Reference. — For section making game protectors, deputy game protectors, and refuge keepers ex officio forest wardens, see § 113-93.

Editor's Note.—The 1935 amendment inserted the words "after careful investiga-

tion" and substituted the words "warrant the establishment of a forest fire organization" for the words "make it advisable and necessary."

The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

§ 113-53. **Duties of State Forester.**—The State Forester, as the State forest ranger, shall have supervision of forest rangers, shall instruct them in their duties, issue such regulations and instructions to all forest rangers as he may deem necessary for the purposes of this article, and cause violations of the laws regarding forest fires to be prosecuted. (1915, c. 243, s. 3; C. S., s. 6135; 1925, c. 106, s. 1; 1927, c. 150, s. 2; 1951, c. 575.)

Editor's Note. — The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

§ 113-54. **Duties of forest rangers; payment of expenses by State and counties.**—Forest rangers shall have charge of measures for controlling forest fires; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the State Forester; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the State Forester, and shall perform such other acts and duties as shall be considered necessary by the State Forester for the protection of the forested area of each of the counties within the State from fire. No county may be held

liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the State Forester; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the State Forester shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the State Forester. Appropriations made by a county for this co-operative forest fire control work are not to replace State and federal funds which may be available to the State Forester for the work in said county, but are to serve as a supplement thereto. (1915, c. 243, s. 4; C. S., s. 6136; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575.)

Local Modification.—Cumberland: 1943, c. 660.

wrote this section as changed by the 1935 and 1943 amendments. The 1951 amendment substituted "rangers" for "wardens".

Editor's Note.—The 1947 amendment re-

ment substituted "rangers" for "wardens".

§ 113-55. Powers of forest rangers to prevent and extinguish fires.

—Forest rangers shall prevent and extinguish forest fires and enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest ranger may arrest, without a warrant, any person or persons taken by him in the act of violating any of the laws for the protection of forests and woodlands, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drought the State Forester may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or his deputies may summon any male resident between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest ranger or person summoned by him for crossing or working upon lands of another in connection with his duties as forest ranger. (1915, c. 243, s. 6; C. S., s. 6137; 1925, c. 106, ss. 1, 2; 1925, c. 240; 1927, c. 150, s. 4; 1951, c. 575.)

Editor's Note. — The 1951 amendment substituted "ranger" and "rangers" for "warden" and "wardens".

Workmen's Compensation Act Applicable to Person Appointed by Ranger to Assist.—A forest warden [now ranger] of a county is given authority by this section to appoint persons between certain ages to assist him in fighting forest fires with pain of penalty upon refusal, and a person so appointed is entitled to receive a small

hourly compensation for the services so rendered, and one so appointed is an employee of the State within the meaning of the Workmen's Compensation Act, and is entitled to compensation thereunder for an injury received in the course of and arising out of his duties imposed by such appointment. *Moore v. State*, 200 N. C. 300, 156 S. E. 806 (1931).

Cited in *Tomlinson v. Norwood*, 208 N. C. 716, 182 S. E. 659 (1935).

§ 113-56. Compensation of forest rangers.—Forest rangers shall receive compensation from the Board of Conservation and Development at a reason-

able rate to be fixed by said Board for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in fighting or extinguishing any fire, according to an itemized statement to be rendered the State Forester every month, and approved by him. Forest rangers shall render to the State Forester a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the State Forester. If said bill be duly approved by the State Forester, it shall be paid by direction of the Board of Conservation and Development out of any funds provided for that purpose. (1915, c. 243, s. 7; C. S., s. 6138; 1924, c. 60; 1925, c. 106, ss. 1, 3; 1925, c. 122, s. 22; 1947, c. 56, s. 2; 1951, c. 575.)

Editor's Note. — The 1947 amendment struck out the words "not to exceed the sum of thirty cents per hour" formerly appearing after the word "Board" in the first sentence.

The 1951 amendment substituted "rangers" for "wardens".

§ 113-57. Woodland defined. — For the purposes of this article, woodland is taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated. (1915, c. 243, s. 11; C. S., s. 6139.)

§ 113-58. Misdemeanor to destroy posted forestry notice.—Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the State Forester, under the provisions of this article, or any other act which may be passed for the purpose of protecting the forests in this State from fire, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or imprisoned not exceeding thirty days. (1915, c. 243, s. 5; C. S., s. 6140.)

§ 113-59. Co-operation between counties and State in forest fire protection.—The board of county commissioners of any county are hereby authorized and empowered to co-operate with the Department of Conservation and Development in the protection from fire of the forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in § 113-54. (1921, c. 26; C. S., s. 6140(a); 1925, c. 122, s. 22; 1945, c. 635.)

Editor's Note.—The 1945 amendment rewrote this section.

§ 113-60. Instructions on forest preservation.—It shall be the duty of all district, county, township wardens, and all deputy rangers provided for in this chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest fires and forest preservation.

It shall be the duty of the various rangers herein mentioned under the direction of the State Forester, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, and shall be prepared to give practical instruction to their

pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3; 1951, c. 575.)

Editor's Note — The 1951 amendment substituted "rangers" for "wardens".

ARTICLE 5.

Corporations for Protection and Development of Forests.

§ 113-61. Private limited dividend corporations may be formed.—Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Director of the Department of Conservation and Development shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this article. (1933, c. 178, s. 1.)

Cross Reference. — As to corporations generally, see § 55-1 et seq.

§ 113-62. Manner of organizing.—A corporation formed under this article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this article and that it consents to be and shall be at all times subject to the rules, regulations and supervision of the Director of the Department of Conservation and Development, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules and regulations from time to time imposed by the Director of the Department of Conservation and Development. (1933, c. 178, s. 2.)

§ 113-63. Directors.—There shall not be less than three directors, one of whom shall always be a person designated by the Director of the Department of Conservation and Development, which one need not be a stockholder. (1933, c. 178, s. 3.)

§ 113-64. Duties of supervision by Director of Department of Conservation and Development.—Corporations formed under this article shall be regulated by the Director of the Department of Conservation and Development in the manner provided in this article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties, which cannot be fairly charged to any particular corporation or corporations, shall be charged to and paid by, all the corporations then organized and existing under this article pro-rata according to their respective stock capitalizations. The Director of the Department of Conservation and Development shall:

(a) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this article and for the protection and development of forests subject to its jurisdiction.

(b) Order all corporations organized under this article to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the Director of the Department of Conservation and Development, or to refrain from doing any acts in violation thereof.

(c) Keep informed as to the general condition of all such corporations, their

capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the Director of the Department of Conservation and Development.

(d) Require every such corporation to file with the Director of the Department of Conservation and Development annual reports and, if the Director of the Department of Conservation and Development shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the Director of the Department of Conservation and Development may require. (1933, c. 178, s. 4.)

§ 113-65. Powers of Director.—The Director of the Department of Conservation and Development may:

(a) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(b) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The Director of the Department of Conservation and Development shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(c) Enforce the provisions of this article and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5.)

§ 113-66. Provision for appeal by corporations to Governor.—If any corporation organized under this article is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the Director of the Department of Conservation and Development, or any valuation or appraisal of any of its property made by the Director of the Department of Conservation and Development, or any failure of or refusal by the Director of the Department of Conservation and Development to approve or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the Director of the Department of Conservation and Development, who shall abide thereby and take such action as the same may direct. (1933, c. 178, s. 6.)

§ 113-67. Limitations as to dividends.—The shares of stock of corporations organized under this article shall have a par value and, except as provided in § 113-69 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum per annum on stock having a preference as to dividends, or eight per centum per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7.)

§ 113-68. Issuance of securities restricted.—No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the Director of the Department of Conservation and Development. (1933, c. 178, s. 8.)

§ 113-69. Limitation on bounties to stockholders.—Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in § 113-67 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9.)

§ 113-70. Earnings above dividend requirements payable to State.—Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in § 113-67 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the Director of the Department of Conservation and Development shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10.)

§ 113-71. Dissolution of corporation.—Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within twenty years of the date of its organization unless the same is accompanied by a certificate of the Director of the Department of Conservation and Development consenting to such dissolution. (1933, c. 178, s. 11.)

§ 113-72. Cutting and sale of timber.—Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the Director of the Department of Conservation and Development, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12.)

§ 113-73. Corporation may not sell or convey without consent of Director, or pay higher interest rate than 6%.—No such corporation shall:

(a) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the Director of the Department of Conservation and Development of the terms of such sale, transfer or assignment, and unless the Director of the Department of Conservation and Development shall consent thereto, and if the Director of the Department of Conservation and Development shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and supervision of the Director of the Department of Conservation and Development for such period as the latter may require;

(b) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum per annum without the consent of the Director of the Department of Conservation and Development;

(c) Mortgage any real property without first having obtained the consent of the Director of the Department of Conservation and Development. (1933, c. 178, s. 13.)

§ 113-74. Power to borrow money limited.—Any such corporation formed under this article may, subject to the approval of the Director of the Department of Conservation and Development, borrow funds and secure their pay-

ment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the Director of the Department of Conservation and Development, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the Director of the Department of Conservation and Development for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14.)

§ 113-75. Director to approve development of forests.—No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the Director of the Department of Conservation and Development, and such approval shall not be given unless:

(1) The Director of the Department of Conservation and Development shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the Director of the Department of Conservation and Development shall require of the activities to be included in the project, such statement to set forth the proposals as to (a) fire prevention and protection, (b) protection against insects and tree diseases, (c) protection against damage by livestock and game, (d) means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and (e) planting and spacing of trees.

(2) There shall be submitted to the Director of the Department of Conservation and Development a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the Director of the Department of Conservation and Development as to where such funds are to be secured.

(3) The Director of the Department of Conservation and Development shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained yield basis except insofar as the Director of the Department of Conservation and Development shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the Director of the Department of Conservation and Development, and that it will at all times comply with such rules and regulations concerning the project as the Director of the Department of Conservation and Development shall from time to time impose. (1933, c. 178, s. 15.)

§ 113-76. Application of corporate income.—The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: First, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the Director of the Department of Conservation and Development to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16.)

§ 113-77. Reorganization of corporations.—Reorganization of corporations organized under this article shall be subject to the supervision of the Director of the Department of Conservation and Development and no such reorganization shall be had without the authorization of the Director of the Department of Conservation and Development. (1933, c. 178, s. 17.)

ARTICLE 6.

Co-Operation for Development of Federal Parks, Parkways and Forests.

§§ 113-78 to 113-81: Repealed by Session Laws 1947, c. 422, §§ 1, 9.

As to transfer of properties and interests formerly held by the committee established under the repealed section, see § 143-255.

ARTICLE 6A.

Forestry Services and Advice for Owners and Operators of Forest Land.

§ 113-81.1. **Authority to render scientific forestry services.**—The North Carolina Department of Conservation and Development is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. (1947, c. 384, s. 1.)

§ 113-81.2. **Services under direction of State Forester; compensation; when services without charge.**—The administration of the provisions of this article shall be under the direction of the State Forester. The State Forester, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

For such designating, measuring or estimating services the State Forester may make a charge, on behalf of the Department of Conservation and Development, in an amount not to exceed five per cent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the State Forester of a statement of such charges, the landowner or operator or his agent shall make payment to the State Forester within thirty days.

In those cases where the State Forester deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forest lands within the State, and to establish practical demonstrations of said principles. (1947, c. 384, s. 2.)

§ 113-81.3. **Deposit of receipts with State treasury.**—All monies paid to the State Forester for services rendered under the provisions of this article shall be deposited into the State treasury to the credit of the Department of Conservation and Development. (1947, c. 384, s. 3.)

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-82. **Title of article.**—This article shall be known by the short title of "The North Carolina Game Law." (1935, c. 486, s. 1.)

Local Modification.—Currituck: 1935, c. 160. **For subsequent law** affecting this subchapter, see §§ 143-237 through 143-254.

Historical Note.—The administration of the game laws was placed in the State Game Commission by Public Laws 1927, c. 51 (the 1927 Game Law). Public Laws 1927, c. 250, purported to abolish the State Game Commission and transfer its powers and duties to the Department of Conservation and Development. (However, see Public Laws 1927, c. 253.) Under the 1935 Game Law (§§ 113-82 through 113-109), administration is placed in the Board of Conservation and Development. See § 113-84.

Under the 1927 Game Laws, the principal administrative officer was the State

Game Warden. The office of State Game Warden and the office of Commissioner of Inland Fisheries were abolished by Public Laws 1933, c. 357; and said act authorized the Board of Conservation and Development to appoint "a person of scientific training and experience in the propagation and preservation of fish and game" to administer the duties prescribed for the State Game Warden and Commissioner of Inland Fisheries. Under the 1935 Game Law, the principal administrative officer is the Commissioner of Game and Inland Fisheries. See §§ 113-83, 113-90.

§ 113-83. Definitions.—For the purpose of this article the following shall be construed, respectively, to mean:

Board—Board of Conservation and Development.

Commissioner—Commissioner of Game and Inland Fisheries.

Person—The plural or singular as the case demands, including individuals, associations, partnerships, and corporations, unless the context otherwise requires.

Take—Whenever it is made lawful to "take" birds or animals, or parts thereof, or birds' nests or eggs, it shall mean the pursuit, hunting, capture or killing of birds or animals, or collecting of birds' nests or eggs in the manner, at the time, and by means specifically permitted. Whenever it is made unlawful to "take" birds or animals or parts thereof, or birds' nests or eggs, the word "take" shall include pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting birds or animals, collecting birds' nests or eggs, and all lesser acts, such as disturbing or annoying birds or animals, or placing or using any net or other device for the purpose of taking birds or animals, whether or not they result in the taking of such birds or animals.

Open season—The time during which birds or animals may be lawfully taken. Each period of time prescribed as an open season shall be construed to include the first and last days thereof.

Closed season—The time during which birds or animals may not be taken.

Transport—Shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation, carriage or export.

Common carrier—Railroad companies, boat lines, express companies, bus lines, and any person transporting persons or property for hire.

Game animals—Deer, bear, fox, squirrels and rabbits.

Fur-bearing animals—Skunk, muskrat, raccoon, opossum, beaver, mink, otter and wildcat.

Non-game animals—All wild animals except game and fur bearing animals.

Upland game birds—Quail, commonly known as Bob White or Partridge, wild turkey, grouse, and pheasants of all kinds.

Migratory wild waterfowl—Anatidaw or waterfowl, including brant, wild duck, geese and swans; migratory wild birds, gruiæ or cranes, including little brown, sandhill, and whooping cranes; rallidae, or rails, including coots, gallinules, sora, and other rails; limicolæ, or hore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, sandpipers, snipes, stilts, surf birds, turnstones, willet, woodcock, and yellow legs; columbidae or pigeons, including doves and wild pigeons.

Non-game birds—All wild birds except upland game birds and migratory game birds.

Game—All game animals and game birds. (1935, c. 486, s. 2.)

§ 113-84. Powers and duties of the Board of Conservation and Development.—It shall be unlawful to take or pursue any of the wild life of the

State at any time or in any manner, except at such times and in such manner as the supply of said wild life may justify, and the said Board is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

1. Fix seasons and bag limits or close seasons on any species of game, bird, or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the Board.

2. Establish and close to hunting or trapping game or bird refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof to hunting or trapping.

3. Acquire by purchase, grant, condemnation, lease, agreement, gift, or devise lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:

(a) Game farms or game refuges.

(b) Lands or waters suitable for game, bird or fur-bearing animal restoration, propagation or protection.

(c) For public hunting or trapping areas to provide places where the public may hunt or trap in accordance with the provisions of law or the regulations of the Board.

(d) To extend and consolidate by exchange lands or waters suitable for the above purposes.

(e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird or fur-bearing animal, needed for propagation or stocking purposes, or to exercise control measures of undesirable species.

4. Enter into co-operative agreements with educational institutions and State, federal or other agencies, to promote wild life research and to train men for wild life management.

5. Enter into co-operative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals, for the development of game, bird or fur-bearing animal management and demonstration projects. (1935, c. 486, s. 4.)

Regulations within Police Power.—See note under § 113-136.

§ 113-85. Limitations on powers.—Nothing in this article, however, shall be construed to authorize the Board to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law. (1935, c. 486, s. 4.)

§ 113-86. Organization of work.—The Board shall establish such departmental bureaus or divisions and shall authorize the Commissioner to employ such experts, clerks, or other employees as it may deem necessary for the conduct of the work of the Board, and it shall fix their salaries or other compensation, which shall be paid out of the game and fish fund. The Board shall authorize such scientific and other studies as may be deemed necessary to its work, and shall collect, classify and disseminate such statistics, data and information as in its discretion will tend to promote the objects of this article. (1935, c. 486, s. 4.)

§ 113-87. Permits to kill game injurious to agriculture.—The Board shall have power to issue permits to kill any species of birds or animals which may become seriously injurious to agriculture or other interests in any particular community, or such birds or animals may be captured alive by it or under its discretion and planted in other sections of the State for restocking, or may be disposed of in such other manner as it may determine: Provided, that birds and

animals committing depredations may be taken at any time without a permit while committing, or about to commit, such depredations. Any permit issued pursuant to this section shall expire within four (4) months after the date of issuance. (1935, c. 486, s. 4.)

§ 113-88. Publication of rules and regulations of Board.—Rules, regulations and orders of the Board shall be published in the following manner: Those having general application throughout the State shall be published at least once in some newspaper published in and having general circulation throughout the State and at each county courthouse door; those of special character having local application only shall be published at least once in some newspaper published in and having general circulation in the locality wherein such rules, regulations and orders are applicable and at the county courthouse door; but, if no such newspaper is so published and circulated, copies of such rules, regulations and orders shall be posted in at least three conspicuous places in the locality in which they are applicable and at the county courthouse door. Such rules, regulations and orders may also be given such other publicity as the Board may deem desirable. (1935, c. 486, s. 5.)

§ 113-89. County game commissions.—This article shall not be construed to dissolve any game commissions now existing in the several counties, nor to prohibit the creation of game commissions in the several counties and such commissions now existing and such as may be created shall exist, but supervision of the provisions of this article and the direction of the policies and administration of this article and other laws which may exist for the same purpose as this shall be vested in and abide with the Board and the powers of such county commissions as may exist or may be created shall be of a nature advisory and recommendatory to the Board and the exercise of any powers by them shall require the approval of the Board of Conservation and Development. (1935, c. 486, s. 6.)

Editor's Note. — The case of *State v. Sizemore*, 199 N. C. 687, 155 S. E. 724 (1930), decided under the provisions of C. S. §§ 2079 through 2086, held that the effect of the North Carolina Game Law is to make county game commissions subordinate to the State Commission, the powers of the former being merely advisory or recommendatory until approved by the State Commission.

§ 113-90. Appointment of Commissioner; salary; expenses; bond; office.—The Director with the approval of the Board shall appoint a Commissioner, who shall receive a salary fixed by the Board, not exceeding five thousand dollars per annum, payable monthly upon his own requisition. The Commissioner shall be reimbursed for his actual and necessary traveling expenses, not to exceed one thousand five hundred dollars per annum, incurred in the discharge of his official business when he is away from the place where his office is located, to be paid by proper voucher. The Commissioner shall give bond in the sum of ten thousand dollars, to be approved by the State Treasurer, conditioned upon his faithful performance of the duties imposed upon him by the provisions of this article. The bond shall be filed with the State Treasurer and the premiums paid from the State Game Fund. The Commissioner shall have his office in the offices of the Board at the capital. (1935, c. 486, s. 7.)

§ 113-91. Powers of Commissioner.—In accordance with, and subject to, such rules and regulations as may from time to time be adopted by the Board relating thereto, the Commissioner shall have the following powers:

(a) **To Issue Permits.**—The Commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists

or zoologists and pay the sum of two dollars (\$2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the Commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a State game department or Commission to restock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this article and to the regulations of the Board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens of any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the Commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this article.

(b) To Employ Deputies.—The Commissioner may employ such game protectors, deputy game protectors, refuge keepers, employees, and agents as shall be necessary for the proper carrying out of the provisions of this article, and with the approval of the Board shall arrange the compensation for such protectors, deputy protectors, refuge keepers, employees and agents. Qualifications for the office of game protector shall be considered in the appointment of all game and fish protectors who shall be required to pass an examination showing their knowledge of provisions of the game and fish laws, the purposes of the protection of wild life, and essential matters of administration of these statutes. Said examination shall be prepared under the supervision of the Commissioner and given in the county or district in which the said protector will serve and shall be conducted under the direction of the Commissioner or some suitable person designated by him. The Commissioner shall have general supervision and control over all such protectors, deputy protectors, refuge keepers, and employees, and shall enforce all the provisions of this article and any other laws now in force or hereafter enacted for the protection of wild birds and animals, and shall exercise all necessary powers incident thereto. It shall be the duty of the protectors, deputy protectors, refuge keepers, and employees to obey and carry out the instructions and directions of the Commissioner for the enforcement of this article.

(c) To Prepare Form of License.—It shall be the duty of the Commissioner

to prepare forms of licenses and other forms necessary for use in the administration of the provisions of this article, and to properly distribute them to the officers and persons required to issue licenses or use such forms. Each license shall be issued in the name of the Commissioner and countersigned by the officer or person issuing it. Each licensee shall sign his name in ink on the license issued him. The Commissioner shall cause the license accounts of officers and persons issuing licenses to be examined and audited at least once during each year, and shall require such officers and persons promptly to pay him, in accordance with the provisions of this article, all monies received by them from the sales of licenses.

(d) To Execute Warrants.—The Commissioner and each of his deputies shall have power to execute all warrants issued for violation of this article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to arrest without warrant any persons committing a violation of this article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(e) To Dispose of Seized Game and Devices.—All game birds and the edible portions of game animals seized under the provisions of this article shall be disposed of by the Commissioner, or under his direction, by gift to hospitals, charitable institutions or almshouses in the county taken within the State. Non-game birds or parts thereof and the plumes or skins of wild birds or birds of foreign species shall be disposed of by the Commissioner by gift to scientific educational institutions within the State, or may be retained by him for use of the Board, or in his discretion they may be destroyed. The Commissioner shall take a receipt from the donee for any such gift, and file such receipt in his office, and he shall keep a permanent record of such gifts. The heads, antlers, horns, hides, skins, or feet, or parts of any game or fur-bearing animal, seized under the provisions of this article, if the person from whom the same were seized is convicted of violating any of the provisions of this article, or if the owner thereof is unknown, may be sold for cash by the Commissioner, or under his direction, at public auction to the highest bidder. Notice of the time and place of such sale, together with a description of the articles to be sold, shall be given by the Commissioner or under his direction in such manner as he may determine to be best calculated to bring the best price therefor: Provided, that if the property seized is perishable, that same may be disposed of by the Commissioner immediately. The Commissioner or his deputies authorized to make the sale shall issue to the purchaser a certificate stating that the purchaser has the legal right to be in possession of the articles bought, and anyone so acquiring said article or articles from the State, other than the person from whom they were seized, shall have the right to possess the same. If the person from whom any of said articles were seized be acquitted of the charge of violating any of the provisions of this article, the article so seized shall be returned to him. It shall be, and is hereby made, the duty of each deputy to make a full and complete report to the Commissioner of all property by him confiscated because of a violation of the game laws of this State, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The Commissioner shall keep in his office a permanent record showing all property confiscated by him or any

of his deputies, and the disposition made thereof under the provisions of this article.

(f) To Seize Certain Devices in Certain Cases.—In all cases of violation of any law relating to the unlawful taking of, or unlawful attempt to take any animals, birds, or fish, during the hours after sunset and before sunrise; or taking of or attempt to take, without a permit, deer or wild turkeys in closed season; or the unlawful taking of any doe deer; or the taking of or attempt to take any animals, birds or fish by means or use of dynamite or other explosive; or by the use of any silencer on any weapon; or by the unlawful use of any artificial light, or by means of any trap, net, snare, or other device, the use of which in taking or attempting to take animals, birds, or fish, is prohibited by law; or in case of transportation of game or game fish illegally so taken; or the unlawful taking or transportation of any doe deer; or in case of the unlawful sale of game or game fish, whether taken legally or illegally, all officers, whose duty it is to enforce the game and game fish laws, are hereby empowered to seize all devices, instruments, weapons, air and watercraft, and vehicles used in the unlawful taking of or unlawful attempt to take animals, birds, or fish, at the times or by the means herein mentioned, or used in the transportation of any birds, animals, or fish so taken, or used in the unlawful taking or transportation of any doe deer, or used in the unlawful sale of game or game fish, whether taken legally or illegally. The devices, instruments, weapons, craft, and vehicles so seized shall be delivered to the sheriff of the county in which such offense is committed, or placed under said sheriff's constructive possession, if delivery of actual possession is impracticable; and the same shall be held by said sheriff pending the trial of the person or persons arrested for any of the offenses herein mentioned; and upon conviction of such person or persons of any of said offenses, the court may in its discretion, and subject to the rights of any third person in the property seized, adjudge the property so seized forfeited, and order the same sold in the manner provided by law for the sale of personal property under execution; the net proceeds of such sale shall be paid into the school fund of said county as other fines and forfeitures; the forfeiture and sale of such property when ordered shall be in addition to such fine or imprisonment as may be imposed by the court.

(g) To Seize Weapons and Devices to Be Used in Evidence.—At the time of making arrests for any violation of any law relating to the unlawful taking of or unlawful attempt to take animals, birds, or fish, the officer making the arrest is hereby empowered to seize any weapon or device unlawfully used in the violation for which the arrest is made; the weapons or devices so seized shall be delivered to the sheriff of the county in which the offense is committed, to be held and used in evidence for the State upon the trial of the person or persons arrested for such violation. After the trial, any weapon or device so seized shall be returned to the owner thereof unless the offense shall be one of the offenses mentioned in subsection (f) hereof, in which case the same may be returned to the owner thereof in such manner as the court may direct, unless the same be adjudged forfeited and ordered sold by the court upon conviction of the owner thereof for one of the offenses mentioned in said subsection (f) hereof.

(h) Whenever any devices, instruments, weapons, air or watercraft, or vehicles are seized and placed in the possession of the sheriff pursuant to subsections (f) or (g) of this section, any person who establishes ownership in any such property to the satisfaction of the court or the sheriff shall be entitled to possession of the same upon furnishing the sheriff a bond in the amount of the value of such property, as fixed by the sheriff, conditioned on such person's producing such property in court on the day of the trial for the offense with respect to which such property was seized. (1935, c. 486, s. 8; 1949, c. 489.)

Editor's Note. — The 1949 amendment provision relating to seizure and confiscation of devices illegally used in taking wild

birds or animals, and rewrote the sentence of subsection (e) relating to return of seized devices to acquitted persons. Subsections (f), (g) and (h) are new with the amendment.

The word "of" in line twenty-six of subsection (a) was apparently intended to read "or".

It was held in *Birchfield v. Department of Conservation, etc.*, 204 N. C. 217, 167 S. E. 855 (1933), decided under a prior law (1927, c. 51), that, although a man may have been appointed deputy game warden, he is not an employee of the State before he has received word of his appointment and accepted it.

§ 113-92. Officers constituted deputy game protectors.—All sheriffs, deputy sheriffs, police officers, forest wardens, park patrolmen, refuge keepers, constables and all other peace officers are hereby made deputy game protectors, and it shall be made their duty to aid in the enforcement of this law. The arrest fee taxed in bills of cost in criminal actions growing out of the violation of this article or violation of laws regulatng fishing, except commercial fishing, when the arrest is made by a game protector or a deputy game protector, shall be paid by the justice of the peace or other criminal court taxing same into the general school fund of the county where the violation took place. No fee shall be taxed in bills of cost for the use and benefit of a game protector or deputy game protector, who appears as a witness at the trial of such case. Any game protector or deputy game protector, who takes arrest fees or witness fees in violation of this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned or both in the discretion of the court, and in addition thereto, upon conviction, he shall forfeit his office. This article shall not apply to sheriffs or deputy sheriffs, who are on fee basis and who make arrests and appear as witnesses in such cases. In no event shall the cost of an action involving the violation of the game and fish laws be taxed against the county or State. (1935, c. 486, s. 9; 1939, c. 119.)

Editor's Note. — The 1939 amendment rewrote this section.

§ 113-93. Protectors, deputy protectors, and refuge keepers constituted special forest wardens.—The Commissioner, protectors, deputy protectors and refuge keepers are hereby made ex officio special forest wardens and charged with the duty of reporting to the forest wardens all infractions of the forest fire law and to assist forest wardens in extinguishing forest fires and generally enforcing the laws and regulations for the preservation of the forests. (1935, c. 486, s. 10.)

Cross Reference.—As to State Forester and forest rangers, duties, etc., see § 113-52 et seq.

§ 113-94. Payment to State Treasurer of license fees.—The Commissioner shall promptly pay to the State Treasurer all monies received by him from the sale of hunting licenses or from any other source arising through the administration of this article, and the State Treasurer shall deposit all such money in a special fund, to be known as the State Game Fund, and which is hereby reserved, set aside, appropriated and made available until expended as may be directed by the Board in the enforcement of this article and for the purposes of this article. (1935, c. 486, s. 11.)

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such

licenses. Licenses may be issued by the clerk of the superior court for each county, the Commissioner, game protectors and such other persons as the Commissioner may authorize in writing:

License Fees

Nonresident hunting license	\$ 15.75
State resident hunting license	3.10
Combination hunting and fishing license	4.10
County hunting license	1.10

Said applicant, if a resident of this State, shall pay to the officer or person issuing the license the sum of one dollar (\$1.00) as a license fee, and the sum of ten cents (10c) as a fee to the officer or person, other than the commissioner, for issuing the same, and shall obtain a county resident hunting license, which shall entitle him to take game birds and animals in the county of his residence, or shall pay to the officer or person issuing the license the sum of three dollars (\$3.00) as a license fee and the sum of ten cents (10c) as a fee to the officer or person other than the Commissioner for issuing the same and shall obtain a resident State hunting license, which shall entitle him to take game birds and animals in any county of the State at large, as authorized by this article. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a nonresident of this State, or a resident for less than six months, or an alien, shall pay to the officer or person issuing the license fifteen dollars and fifty cents (\$15.50) as a license fee and the sum of twenty-five cents (25c) as a fee to the officer or person other than the Commissioner for issuing the same and shall obtain a nonresident hunting license, which shall entitle him to take game birds and game animals as authorized by this article. The Commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a State resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of four dollars (\$4.00) as a license fee and ten cents (10c) as a fee for issuing same, which shall entitle him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25c) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25c) of each State fee herein described shall be expended by such Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars (\$10.00), the Board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the

regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fees, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands by payment of a license fee of five dollars (\$5.00) plus twenty-five cents (25c) for the issuing officer. Such nonresident must make a sworn application to the Commissioner, on forms provided by said Commissioner, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Commissioner, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident land-owner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1.)

Editor's Note. — The 1945 amendment made changes in the fees specified under the heading "License Fees" and in the paragraph following such heading. It also added the proviso at the end of the paragraph and struck out a former proviso relating to Northampton County. The 1949 amendment rewrote the latter part of the second paragraph.

Use of Unexpended Funds. — Session Laws 1949, c. 1203, s. 3, provides that fifty

per cent of the fund which has heretofore accumulated for the purchase, lease, development, and management of lands and waters, pursuant to §§ 113-95 and 113-144, and remains unexpended, may be expended by the North Carolina Wildlife Resources Commission, in its discretion, to expand, enlarge and make more effective the work of the education and enforcement divisions of the Commission.

§ 113-95.1. Licenses for members of armed forces.—All members of the armed forces of the United States stationed at a military facility in North Carolina shall be required to meet State hunting license requirements, as provided by this article, on all land within the State including land under jurisdiction of the armed forces; provided, however, that any member of the armed forces who is a nonresident of North Carolina, and who is assigned to active duty at a military facility in North Carolina, shall be entitled to purchase a resident State hunting license without regard to State residence requirements. (1951, c. 1112, s. 1.)

§ 113-96. Trappers' licenses.—Any person who shall at any time take fur-bearing animals by trapping, shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of two dollars (\$2.00) as a license fee, and the sum of twenty-five cents (25c) as a fee to the officer or person other than the Commissioner of Game and Inland Fisheries, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of three dollars (\$3.00) as a license fee and the sum of twenty-five cents (25c) as a fee to the officer or person other than the Commissioner, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars (\$25.00) as a license fee, and the sum of twenty-five cents (25c) as a fee to the officer or person, other than the Commissioner, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the Commissioner, and shall be distinguished from the general hunt-

ing licenses above provided. The manner of taking fur-bearing animals by trapping, shall be as provided in this article. The Board is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this article. (1929, c. 278, s. 3.)

§ 113-97. **Term and use of license.**—Each license shall be void after the first day of August next succeeding the date of its issuance. Each licensee shall have his license on his person at all times when he is taking game animals or game birds, and shall exhibit the same for inspection to any game protector or other officer requesting to see it. No person shall alter or loan, change, or transfer any license issued pursuant to the provisions of this article, nor shall any person other than the person to whom it is issued use the same. (1935, c. 486, s. 13.)

§ 113-98. **Exemption.**—Any person who is a resident of this State, and any dependent member of his family under twenty-one years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this article, on lands owned by such resident without a license; and a minor member of a family resident of this State, under sixteen years of age, may hunt under the license of his parent or guardian; but such minor must carry such license when so hunting, unless accompanied by such parent or guardian; and a nonresident minor child of any resident of this State may lawfully procure and use the same license required of a resident, when such nonresident child is actually visiting such resident parent: Provided, that a party who leases a farm for cultivation shall not be required to obtain a license to hunt thereon. (1935, c. 486, s. 14.)

§ 113-99. **Disposition of license fees.**—The license fees provided to be paid in this article shall be remitted by the officers or persons issuing the license on the first and fifteenth of each month to the Commissioner with a schedule setting forth the name and address of each licensee, the serial number and classification of the license, and the amount paid for each license issued, except that the officer or person issuing licenses shall, before making such remittance, deduct and retain as his fee the amount of fees provided to be paid to him by the provisions of this article for issuing license. On or before the first day of April of each year, each officer or person authorized to issue license shall forward to the Commissioner the stubs of licenses issued by him and all unused licenses, together with a report covering the number of licenses issued and the amount of license money received by him; the Commissioner shall tabulate the total number of licenses of all kinds issued in the State and the fees received therefor, and he shall include such data in his biennial report. (1935, c. 486, s. 15.)

§ 113-100. **Open season.**—The open seasons for taking game animals and game birds, subject to changes by the Board of Conservation and Development from time to time as the supply of wild life shall justify, are as follows:

Bear	October 1 to January 1
Deer (male)	October 1 to January 1
Mink, Muskrat, Otter	November 1 to February 15
Opossum, Raccoon (with gun or dogs)	October 1 to February 1
Opossum, Raccoon (trapping)	November 1 to February 15
Quail	Thanksgiving Day of each year to February 15
Rabbit	Thanksgiving Day of each year to February 15
Squirrel	September 15 to January 15

Turkey	Thanksgiving Day of each year to February 1
Woodcock	December 1 to December 31
Ruffed Grouse	November 20 to December 15
Wildcat, Weasel, Skunk	No closed season
Beaver, Buffalo, Elk, Doe Deer and Pheasants	No open season
Dove, Ducks, Geese, Brant and other migratory waterfowl	Federal regulations
Snipe, Sora, Marsh Hens, Rails, Gallinules	Federal regulations
Fox	County regulations

The open and closed season on all migratory wild fowl shall conform with the United States biological survey legislation, irrespective of seasons as set forth by the North Carolina Game Law. (1935, c. 486, s. 16.)

§ 113-101. **Bag limits.**—It shall be unlawful to take a greater number of each species of birds or animals per day or per season than is enumerated in the following table. The Board of Conservation and Development may alter these bag limits as changes in the supply of wild life may justify.

	Per Day	Per Season
Bear	No limit	No limit
Deer	1	3
Mink, Muskrat, Otter	No limit	No limit
Opossum, Raccoons	No limit	No limit
Quail	10	150
Rabbit	No limit	No limit
Squirrel	10	No limit
Turkey	1	3
Ruffed Grouse	2	10

Woodcock—Federal regulations.
Dove, Ducks, Geese, Brant and other migratory waterfowl—Federal regulations
Snipe, Sora, Marsh Hens, Rails, Gallinules—Federal regulations.
Wildcat, Weasel and Skunk—No limit.
Fox—County regulations.

Game birds and game animals lawfully taken may be possessed during the open season therefor and the first ten (10) days next succeeding the close of such open season, but a person may not have in possession at any one time more than two (2) deer, two (2) wild turkeys and two days' bag limit of other game animals or game birds.

Notwithstanding any other provisions of this section or any other section of law, it shall not be unlawful for any person to possess game birds and game animals for a period longer than ten (10) days next succeeding the close of the open season during which such birds or animals were lawfully taken, provided a written declaration of the kinds and amounts of birds or animals so possessed is filed with the county game and fish protector within ten (10) days of the close of the season during which such birds or animals were taken, but the amount and kinds of such birds and animals possessed at any one time shall not exceed the limitations imposed by law on the possession of any such birds or animals.

The bag limit, possession limit and open seasons on dove and all other migratory birds and wild fowl shall be the same as that prescribed by the United States biological survey legislation irrespective of bag limits, possession limits and seasons set forth by the North Carolina Game Law. (1935, c. 486, s. 17; 1949, c. 1205, s. 1.)

Editor's Note.—The 1949 amendment inserted the next to the last paragraph.

§ 113-102. **Protected and unprotected game.**—Birds and animals for

which no open season is provided shall be classed as protected and it shall be unlawful to take or possess them at any time. Unprotected birds and animals may be taken, possessed, bought, sold and transported at any time in any manner.

1. Unprotected Birds: English Sparrows, Great Horned Owls, Cooper's Hawks, Sharp-Shinned Hawks, Crows, Jays, Blackbirds, Starlings and Buzzards and their nests and eggs.

2. Unprotected Animals: Wildcats, Weasels and Skunks: Provided, that unprotected birds and animals may not be killed by the use of poison or dynamite except under permit issued by the Commissioner.

3. No person shall take squirrels at any time in any public park. It shall be unlawful at any time to buy, or sell, rabbits or squirrels for the purpose of resale. Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. (1935, c. 486, s. 18; 1949, c. 1205, s. 2.)

Editor's Note. — The 1949 amendment rewrote the second sentence of subsection 3.

Session Laws 1951, c. 450, provides: "It shall be unlawful for any person to take, or attempt to take, by the use of fire-

arms, any game bird or animal from the right of way of any public highway, roadway, or other publicly maintained thoroughfare, and this act shall apply only to the counties of Duplin and Pender."

§ 113-103. Unlawful possession.—The possession, transportation, purchase or sale of any dead game animals, dead game birds, or parts thereof during the closed season in North Carolina, though said animals, birds, or any parts thereof were taken or killed without the State in the open season in such state, shall be unlawful; and the possession of same shall be prima facie evidence of the violation thereof: Provided, said animals or birds or parts thereof belong to any one of the family or classes protected by the North Carolina Game Law as amended to date.

The Commissioner, all game protectors, deputy game protectors and refuge keepers shall have the power to enter and search any refrigeration plant, refrigerators and ice boxes of all public refrigerating storage plants, meat shops, hotels, restaurants, or other public eating places, in which such officer, making such search, has reasonable grounds to believe that game taken, killed or stored in violation of the North Carolina Game Law has been concealed or stored, and which will furnish evidence of a violation of such laws; and such search may be made without warrant, except that no dwelling may be searched without a warrant. (1935, c. 486, s. 19.)

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, café, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset with a shot gun not larger than number ten (10) gauge, or a rifle, unless otherwise specifically permitted by this article. No

person shall take any game animals or game birds or migratory game birds from any automobile, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt-lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt-lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sail boat, or any boat under sail, or any floating device towed by a power boat or sail boat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light when hunting raccoons or opossum with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shot gun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3.)

Editor's Note. — The 1939 amendment added the last paragraph.

The 1949 amendment made changes in the first paragraph by inserting the words "at any time" in the provision prohibiting the taking of birds or animals from an air-

plane, etc., and added to said provision the following words; "or, during the hours between sunset and sunrise, from any other floating device." It also made lawful the use of an artificial light when hunting raccoons, opossum, or frogs.

§ 113-105. License to engage in business of game propagation; sale and transportation regulated.—Any person desiring to engage in the business of propagating in captivity upland game birds, ducks and geese, or any of them on land of which he is the owner or lessee and selling same pursuant to the provisions of this section, may make application in writing to the Commissioner for a license to do so. The Commissioner, when it shall appear that such application is made in good faith, shall upon the payment of a fee of two dollars (\$2.00), issue to each applicant a license permitting such licensee to propagate such game birds on land of which he is the owner or lessee, the location of which shall be stated in such application and such license; to sell and ship such propagated game birds in the State from the State alive at any time for breeding or stocking purposes and take such propagated game birds except quail and wild turkey in any manner and at any time and sell the carcasses for food as herein-after prescribed: Provided, that propagated upland game birds may be killed by shooting only during the open season as established by the Board; and, provided further, that propagated migratory game birds may be killed by shooting only

during the open season for migratory game birds. Each such license shall expire on the thirty-first day of December of the year in which it is issued. Each holder of a game bird propagating license shall keep such license prominently displayed at the place of business specified therein.

Every person holding a game bird propagating license issued by the Commissioner shall keep accurate, written records, showing the number of game birds of each species propagated, bought, or sold, and the disposition thereof. These records shall be kept permanently on the premises stated in such license and shall be open for inspection by any duly authorized representative of the Commissioner at all reasonable times.

Migratory game birds propagated in accordance with this section shall not be bought or sold for food, unless each bird before attaining the age of four weeks, shall have had removed from the web of one foot a portion thereof in the form of a "V" large enough to make a well-defined mark, which shall be sufficient to identify it as a bird propagated in accordance with this section of the North Carolina Game Law. Migratory game birds propagated in accordance with this section may be bought, sold or offered for sale for food only after being tagged with an indestructible metal tag which shall be supplied by the Board.

Common carriers shall receive and transport game birds tagged as aforesaid but to every package containing such propagated game birds shall be affixed a tag or label upon which shall plainly be printed or written the name, address and license number of the person by whom such propagated game birds are shipped and the name and address of the person to whom such propagated game birds are to be transported and number of each kind contained therein. The Board shall be entitled to receive and shall collect for each tag to be affixed to the carcass of each game bird propagated, in accordance with this section, the sum of five cents. The said tags shall remain affixed as aforesaid until the carcasses of such propagated game birds shall be finally prepared for consumption: Provided, that the owner or proprietor of a hotel, restaurant, boarding house, or the manager of a club, may sell a portion of a tagged game bird to a guest, customer, or member, for consumption on the premises.

The proprietor or keeper of a hotel, restaurant or café, boarding house or club, desiring to serve game to his patrons, may make application to the Department of Conservation and Development for a license to do so. The Department, when it shall appear that such application is made in good faith, shall upon the payment of a fee of ten dollars (\$10.00) issue to each such applicant a license permitting the holder thereof to buy and possess game birds lawfully tagged, and to serve such game to his patrons for consumption at any time, but only on the premises, the location of which shall be definitely stated in such license and the application therefor. Each such license to serve game birds shall expire on the thirty-first day of December in the year in which it is issued. Each person holding a license to serve game birds shall keep such license prominently displayed at the place of business specified therein. The holder of a license to serve game birds may purchase only game birds tagged in accordance with law. Each holder of a license to serve game birds shall keep accurate written records of each and every purchase, which records shall contain the name and address of the person or corporation from whom such game birds were purchased, the date of each transaction and the number and kind of game birds included in each purchase. These records shall be kept permanently at the place of business specified in the license and shall be open for inspection by any duly authorized representative of the Department at all reasonable times. Each holder of a license to serve game birds shall send a certified copy of these records for the previous calendar year to the Department not later than January fifteenth. The Department shall furnish the forms on which these records are to be kept. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds raised in domestication pursuant to the provisions of this article. (1935, c. 486, s. 29.)

§ 113-106. Unlawful transportation.—No common carrier or employee of such carrier shall, while engaged in such business, transport for the owner any wild animals or birds or any part thereof, or nest or eggs of any bird, nor shall any such carrier or employee knowingly receive or possess the same for shipment for another, unless the person offering the same for shipment is in possession of valid hunting license or collecting permit. A person who is a resident of this State may transport within the State during the open season therefor, game birds and game animals lawfully taken. A person who is a nonresident of the State and a holder of a valid nonresident hunting license, may, under a permit issued by the Commissioner, transport within this State, or from a point within to a point without, during the open season therefor, game birds and game animals or parts thereof lawfully taken by him, but he shall not transport out of the State during any one open season more than two male deer and two wild turkeys, or during one calendar week more than two days' bag limit of other game animals and game birds. A person may transport, buy, or sell at any time or in any manner, non-game animals and the fur of fur-bearing animals lawfully taken and tagged. A person may transport, and possess at any time and in any manner the head, antlers, hides, feet or skin of game animals or game birds lawfully taken. A person may buy and sell at any time the mounted specimens of heads, antlers, hides and feet of game animals, and the skins of game birds lawfully taken and possessed: Provided, the person selling such specimens has a written permit issued by the Commissioner, authorizing him to do so. (1935, c. 486, s. 22; 1941, c. 231, s. 1.)

Editor's Note.—Prior to the 1941 amendment the second, third and fifth sentences relating to permissible transportation excepted transportation by parcel post.

§ 113-107. Marking packages in which game transported.—Any package in which any wild animal or bird or parts thereof or egg or nest of any wild bird is transported shall have clearly and conspicuously marked on the outside thereof, the names and addresses of the consignor and consignee, together with an accurate statement of the number and kinds of animals or birds or parts thereof, or eggs or nests, contained therein. (1935, c. 486, s. 23.)

§ 113-108. Privately owned public hunting grounds.—In order to improve hunting, to open to the hunting public lands well stocked with game, and to give landowners some income through game protection and propagation, the State of North Carolina, through the Department of Conservation and Development, is authorized to recognize, list, and assist the owners in protecting their lands which are a part of public hunting grounds organized under this section of the North Carolina Game Law, subject to the following conditions, stipulations, and such rules as the Conservation Board may adopt for the regulation of said hunting grounds:

(1) The minimum area recognized under this article is one thousand (1,000) acres;

(2) Owners of land included in a hunting ground formed under this article must organize, adopt rules and regulations for the operation of said hunting grounds, and be recognized by the Department of Conservation and Development before such hunting grounds are put into operation under this article;

(3) The Department of Conservation and Development will list and assist in advertising such public hunting grounds as are formed under this article, subject to such rules and regulations as may be adopted by the Board from time to time, and in accordance with the North Carolina Game Law and this article. The Department of Conservation and Development will furnish at cost to the owners of public hunting grounds posters to be used in posting such lands, such posters to state that the lands are posted under this section of the North Carolina Game Law and in case of withdrawal of recognition by the Department such posters

shall be removed from the land affected within ten days after notice to owner or owners;

(4) Owners of public hunting grounds shall require of each and every hunter the prescribed hunting licenses as set forth elsewhere in the North Carolina Game Law;

(5) The owners of public hunting grounds may require of each and every hunter a per day rate for hunting, rates to be approved by the Department of Conservation and Development, said rates not to exceed four dollars (\$4.00). In addition to charges for privileges of shooting game, landowners may charge a dog hire when landowners furnish dogs, dogs to be furnished only by request of the hunter;

(6) When any group of owners of a public hunting ground, organized under this article, decide to promote the hunting of certain kinds of game, said kinds of game used for stocking to be propagated in game breeding plants organized and operated under the game and other laws of North Carolina, the owner shall be permitted to charge hunters such fees and rates as are approved by the Board of Conservation and Development;

(7) No hunter is allowed to quit the hunting grounds at the end of the day's or part of a day's hunting without seeing the authority who gave him permission to hunt on said hunting grounds and paying all accounts due said authority;

(8) No construction or interpretation shall be put on this section or any part thereof as to permit the sale of dead game killed in accordance with this article, abrogate the bag limits, time of hunting, open and closed seasons as prescribed elsewhere in the North Carolina Game Law;

(9) No person shall hunt or discharge firearms upon any public hunting grounds organized under this section without being accompanied by one of the landowners or a personal representative of one landowner, or after securing, on the day of the hunt, or day preceding the hunt, written permission to hunt under the authority of this article, said written permission to bear the name in full, age, and address of the hunter, under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars (\$25.00) for each and every offense;

(10) When hunting grounds or any part thereof, organized and operated under this article are used for purposes not consistent with the federal, State and local laws, the Department of Conservation and Development shall withdraw recognition from the area of such parts thereof as are deemed advisable, and report the case to the proper civil officials. (1935, c. 486, s. 24.)

§ 113-109. Punishment for violation of article.—Any person who takes, possesses, transports, buys, sells, offers for sale or has in possession for sale or transportation any wild bird, animal, or part thereof, or nest or egg of any bird, in violation of any of the provisions of this article, or who violates any other provisions of this article, or fails to perform any duty imposed upon him by this article, or who violates any lawful order, rule or regulation promulgated by the Board, shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisoned for not more than thirty days, and upon the second offense and conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), or by imprisonment for not more than six months, or both, in the discretion of the court. And in all cases of conviction under this section, the court in which such conviction is had shall revoke any hunting license then held by the person so convicted, and the court shall require the surrender of said license, which shall be forwarded together with the record of such conviction to the Board. Such revocation of license shall be mandatory for the remainder of the period for which the license was issued. Any person who shall swear to or affirm any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury.

Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall upon conviction be fined not less than one hundred dollars (\$100.00) or imprisoned for not less than sixty (60) days or both fined and imprisoned in the discretion of the court. The following acts or circumstances shall constitute prima facie evidence of a violation of provisions of the preceding sentence: The flashing or display of any artificial light or device from any highway or public or private driveway so that the beam thereof is visible for a distance of as much as fifty (50) feet from such highway of public or private driveway, or such flashing or display of such artificial light or device at any place off such highway or driveway when such acts or circumstances are accompanied by the possession of firearms or bow and arrow during the hours between sunset and sunrise. Further, the use or possession of any artificial light or device under circumstances heretofore set forth in this article, except as authorized herein for the hunting of raccoons, opossums or frogs, shall constitute prima facie evidence of a violation of this article.

Provided further, that any person taking or having in possession doe (female) deer in violation of this article shall be fined not less than fifty dollars (\$50.00) or imprisoned not less than thirty (30) days or both fined and imprisoned in the discretion of the court. Any person, firm or corporation who buys or sells, or offers to buy or sell, quail, grouse and wild turkeys in violation of the provisions of this article shall, upon conviction thereof, be fined not less than fifty dollars (\$50.00), or imprisoned for not more than sixty days, or both fined and imprisoned in the discretion of the court. (1935, c. 486, s. 25; 1939, c. 235, s. 2; 1939, c. 269; 1941, c. 231, s. 2; 1941, c. 288; 1945, c. 635; 1949, c. 1205, s. 4.)

Local Modification.—Buncombe: 1941, c. 156; Pitt: 1941, c. 285.

Editor's Note.—The first 1939 amendment changed the provision as to revocation of license. The second 1939 amendment added the last sentence of the section. The 1941 amendments inserted the words "grouse and wild turkeys" in the last sen-

tence, and added provisions relating to deer. The 1945 amendment rewrote the second sentence. The 1949 amendment inserted the words "less than ten dollars (\$10.00) nor" in the first sentence, and also inserted the provisions as to prima facie evidence of violation.

ARTICLE 8.

Fox Hunting Regulations.

§ 113-110: Repealed by Session Laws 1945, c. 217.

Editor's Note.—The repealing act provided: "The repeal of this section shall not affect the legal status of any local law listed thereunder as the same was prior to the adoption of the General Statutes of North

Carolina by the General Assembly of one thousand nine hundred and forty-three."

Session Laws 1945, c. 844, repealed the portion of this section relating to Duplin County.

§ 113-111. No closed season in certain counties.—It shall be lawful to hunt, take or kill foxes at any time in Ashe, Avery, Beaufort, Davidson, Davie, Harnett, Haywood, Henderson, Iredell, Lenoir, Nash, Pitt, and Watauga counties. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263.)

Editor's Note. — The 1933 amendment added Henderson to the list of counties. The 1939 amendment added Haywood and Pitt. The 1943 amendment added Har-

nett. The 1947 amendments added Beaufort, Davie and Nash. And the 1949 amendment added Davidson.

§ 113-112. Police power of protectors in enforcing county laws relative to foxes.—All game protectors duly appointed by the Department of Conservation and Development and all ex officio game protectors named in the North Carolina Game Law shall be authorized and empowered as fully as is the sheriff

and other local officers to enforce local and county laws relating to the open and closed seasons to hunt or protect red and grey foxes. (1931, c. 143, s. 5.)

ARTICLE 9.

Federal Regulations on Federal Lands.

§ 113-113. Legislative consent; violation made a misdemeanor.—The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and non-game birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March first, one thousand nine hundred and eleven, entitled “An act to enable any state to co-operate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers” (36 U. S. Stat. at Large, p. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wild life from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or non-game birds and fish, by any person, firm or corporation, including any agency, department or instrumentality of the United States government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of article 7 of this subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; C. S., s. 2099; 1939, c. 79, ss. 1, 2.)

Editor's Note. — The 1939 amendment added the second and third paragraphs to this section. For comment on the amendment, see 17 N. C. Law Rev. 364.

Acceptance May Be Presumed. — Acceptance of such a grant as is made by this section may be presumed. *Chalk v. United States*, 114 F. (2d) 207 (1940).

Acceptance of Jurisdiction over Pisgah National Forest and Pisgah National Game Preserve.—Federal statute authorizing the President of the United States to designate areas set aside for protection of game and fish on lands purchased by the United States, and punishing the unlawful taking of game or fish, constituted an acceptance by the United States of the cession to it of jurisdiction over the Pisgah

National Forest and the Pisgah National Game Preserve by a prior act of the legislature of North Carolina. *Chalk v. United States*, 114 F. (2d) 207 (1940).

Limitation of Number of Deer Therein. —Where the United States acquired land by grant from North Carolina for the Pisgah National Forest and the Pisgah National Game Preserve, and the legislature of North Carolina enacted an act consenting that Congress should make rules and regulations with respect to animals, birds, and fish, and it was established that deer herd on the Preserve was so large as to damage the Preserve, the United States could, without regard to State laws, limit the number of deer thereon. *Chalk v. United States*, 114 F. (2d) 207 (1940).

ARTICLE 10.

Regulation of Fur Dealers; Licenses.

§ 113-114. Fur dealer's license; fees.—Every person, firm or corporation who engages in the business of buying and selling raw furs, pelts or skins of fur-bearing animals shall before beginning such business, and annually thereafter, obtain a license from the Department of Conservation and Development. The fees for such licenses shall be as follows:

1. For a resident State-wide license, the sum of twenty-five dollars.

This license will entitle the holder to buy and sell furs in any or all of the counties in North Carolina.

2. For a resident county license, the sum of ten dollars. This license will entitle the holder to buy and sell furs only in the county designated in the license. The fee for each additional county shall be ten dollars.

3. For a resident county license which entitles the dealer to buy or sell only at a fixed place of business in the county of his residence, the sum of five dollars.

4. For a nonresident of the State, the sum of one hundred dollars for a State-wide license.

These licenses shall be issued through the game protectors or agents of the Department of Conservation and Development as a part of their official duties. The funds so received from the sale of the above licenses shall be deposited with the State Treasurer to the credit of the Department of Conservation and Development and they shall be expended for the protection and promotion of the fur-bearing industry in North Carolina and for the administration and enforcement of this article and for no other purpose. (1929, c. 333, ss. 1, 2; 1933, c. 337, s. 1.)

Editor's Note. — The 1933 amendment changed the fees for licenses.

§ 113-115. Annual report of furs bought.—Every person, firm or corporation who takes out a fur dealer's license shall report to the Department of Conservation and Development on April first of each year and every year the total amount of furs bought by such dealer, including the species of fur-bearing animals and the number of each, and such other information as required by the Department of Conservation and Development. (1929, c. 333, s. 3.)

§ 113-116. What counties may levy tax.—No county, city or town shall have the right to levy any license on resident fur dealers except that the county in which such dealers or buyers maintain a place of business or residence may charge and collect from such dealers a license tax of not more than five dollars per annum. (1929, c. 333, s. 4; 1933, c. 337, s. 2.)

Editor's Note. — The 1933 amendment changed the amount from ten to five dollars.

§ 113-117. Permits may be issued to nonresident dealers.—It shall be lawful for the Department of Conservation and Development to issue permits to nonresident dealers for the purchase of raw furs from only State-wide licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3; 1935, c. 471, s. 1.)

Editor's Note. — Prior to the 1933 amendment this section contained a proviso limiting permits to the purchase of furs from dealers who had taken out a

\$75 license. The 1935 amendment inserted the word "State-wide" near the end of the section.

§ 113-118. Licenses for each employee of dealer; fees; residence requirement.—All bona fide members of a resident firm or corporation and their bona fide regular employees, all such members and employees being residents of North Carolina, shall be required to take out a license showing their employment and shall pay therefor the sum of twenty-five dollars each: Provided that the employees of a resident firm or corporation operating under a county resident fur dealer's license shall be required to pay only the sum of ten dollars (\$10.00). Applicants for resident fur dealer's license must have actually resided in the State for six months next before making application for such license. (1929, c. 333, s. 6; 1933, c. 337, s. 4; 1935, c. 471, s. 3.)

Editor's Note. — The 1933 amendment struck out the word "duplicate" formerly appearing before the word "license" in the

first sentence. It also increased the license fee from \$10 to \$25. The 1935 amendment added the proviso.

§ 113-119. **Nonresident buying furs personally or through agent classed as nonresident fur dealer.**—Any nonresident person, firm or corporation or any agent or person acting as agent therefor, who in any manner purchases or solicits to purchase furs in North Carolina, except as provided in § 113-117, shall be subject to and shall procure from the Department of Conservation and Development a nonresident fur dealer's license before he shall be entitled to purchase or solicit to purchase furs as above set out in this section. (1929, c. 333, s. 7; 1935, c. 471, s. 2.)

§ 113-120. **Violation a misdemeanor.**—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars or imprisoned not more than sixty days for the first offense, and on conviction of second violation of this article such person, firm or corporation shall pay not less than two hundred dollars or be imprisoned not more than six months or both in the discretion of the court. (1929, c. 333, s. 8.)

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. **Trespass for purposes of hunting, etc., without written consent a misdemeanor.**—Any person who willfully goes on the lands, waters or ponds of another upon which notices, signs or posters, described in § 113-120.2, prohibiting hunting, fishing or trapping, or upon which "posted" notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not more than fifty dollars (\$50.00) or by confinement in jail for not more than thirty days: Provided that no arrest under authority of this section shall be made without the consent of the owner or owners of said land or their duly authorized agent. (1949, c. 887, s. 1.)

§ 113-120.2. **Regulations as to posting of property.**—The notices, signs or posters described in § 113-120.1 shall measure not less than ten inches by twelve inches and shall be conspicuously posted on private lands not less than 150 yards and not more than 500 yards apart close to and along the boundaries. At least one such notice, sign or poster shall be posted on each side of such land, and one at each corner thereof, provided said corner can be reasonably ascertained. (1949, c. 887, s. 2.)

§ 113-120.3. **Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.**—Any person who shall mutilate, destroy or take down any "posted", "no hunting" or similar notice, sign or poster on the lands or waters of another, or who shall post such sign or poster on the lands or waters of another, without the consent of the landowner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than fifteen dollars (\$15.00). (1949, c. 887, s. 3.)

§ 113-120.4. **Fishing on navigable waters, etc., not prohibited.**—Nothing in this article shall be construed to prohibit the entrance of any person upon navigable waters and the bays and sounds adjoining such waters for the purpose of fishing. (1949, c. 887, s. 4.)

ARTICLE 11.

Miscellaneous Provisions.

§ 113-121. **Possession of firearm silencer, while hunting game, made unlawful.**—It shall be unlawful for any person while hunting game in this State to have in his possession a shotgun, pistol, rifle, or any firearm equipped with a

silencer of any type or kind or any device or mechanism designed to silence, muffle, or minimize the report of such firearm, whether such silencer or device or mechanism is separate from or attached to such firearm.

If any person shall be convicted of a violation of this section he shall be fined not less than one hundred dollars (\$100.00) or imprisoned not less than sixty days, or both, in the discretion of the court. (1937, c. 152.)

§ 113-122. Sanctuary on Grandfather Mountain; molestation of game a misdemeanor.—Part of Grandfather Mountain situate in the counties of Avery, Caldwell and above the Yonahlossee Road on one side, and above the elevation of four thousand feet on the other side, is established as a sanctuary for the preservation and protection of deer, squirrels and other wild animals (except wildcats), and wild turkeys, pheasants, eagles, hawks, ravens and all other bird life.

It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established by the preceding paragraph, any deer, squirrels, or other wild animals (except wildcats), any wild turkeys, pheasants, eagles, hawks, ravens, or any kind of bird life. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 191; C. S., ss. 2105(a), 2105(b); 1925, c. 212.)

§ 113-123. Assent of State to act of Congress providing for aid in wild life restoration projects.—The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wild life restoration projects, and for other purposes," approved September second, one thousand nine hundred thirty-seven (Public, number four hundred fifteen, seventy-fifth Congress), and the North Carolina Department of Conservation and Development is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of co-operative wild life restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wild life in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Division of Game and Inland Fisheries under the direction of the North Carolina Department of Conservation and Development. (1939, c. 271.)

§ 113-124. Birds kept as pets or for breeding.—It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating. (1903 (Pr.), c. 337, ss. 6, 7; Rev., s. 1876; C. S., s. 2103.)

§ 113-125. Bird dogs running at large in certain counties.—It shall be unlawful for the owner or any person having the care of any pointer or setter dog to permit the same to run at large unmuzzled during the breeding season of quail, namely, from April the first to September first of any year. When any pointer or setter dog shall be found ranging unmuzzled in the field or woods it shall be prima facie evidence that the owner of such pointer or setter dog has violated the provisions of this section, and upon conviction such owner or his agent shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not longer than thirty days.

This section shall apply only to the counties of Davidson, Durham, Forsyth, Greene, Guilford, Iredell, Johnston, Moore, Transylvania and Yancey. (1909, c. 775; C. S., s. 2132.)

§ 113-126. Deer; fire-hunting; compelling testimony.—When more persons than one are engaged in committing the offense of fire-hunting, anyone

may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense. (1774, c. 103, P. R.; 1784, c. 212, ss. 1, 3, P. R.; 1801, c. 595, P. R.; R. C., c. 34, ss. 95, 96; 1856-7, c. 24; 1879, c. 92; Code, ss. 1058, 1059; 1905, c. 388; Rev., s. 3462; C. S., s. 2125; 1925, c. 194.)

Local Modification. — Currituck: C. S. 2125.

SUBCHAPTER IV. FISH AND FISHERIES.

ARTICLE 12.

General Provisions for Administration.

§ 113-127. Definitions.—When used in this subchapter:

(1) "Fish" or "fishes" includes porpoises and other marine mammals, fishes, mollusca, and crustaceans, and "fishing" or "fisheries" includes all operations involved in using, setting or operating apparatus employed in killing or taking such animals or in transporting and preparing them for market.

(2) "Board" means the Board of Conservation and Development. (1915, c. 84, s. 24; C. S., s. 1865.)

As to subsequent law affecting this subchapter, see §§ 143-237 through 143-254.

§ 113-128. Administrative machinery for enforcing laws relating to fish.—The State of North Carolina shall have exclusive jurisdiction and control over all the fisheries of the State, wherever located. The laws relating to fish shall be enforced by the Board of Conservation and Development through the Commissioner of Game and Inland Fisheries, appointed pursuant to § 113-90, and through the Commissioner of Commercial Fisheries appointed pursuant to § 113-129. (1915, c. 84, ss. 1, 18; 1917, c. 290, ss. 1, 9; C. S., ss. 1867, 1869; Ex. Sess. 1921, c. 42, s. 1; 1923, c. 168, s. 1.)

§ 113-129. Commissioner of Commercial Fisheries.—The Board of Conservation and Development shall appoint a Commercial Fisheries Commissioner, who shall be responsible to the Board and shall make semiannual reports to them at such time as they may require. His term of office shall be four years or until his successor is appointed and qualified, and in case of a vacancy in the office the appointment shall be to fill the vacancy. By and with the consent of the Board, the Commissioner may appoint assistants or may remove them and appoint their successors. Their duties shall be prescribed by the Commissioner. The salary of the Commissioner and his assistants shall be fixed by the Board with the approval of the Budget Bureau, and if the Commissioner is absent or unable to act, the Board shall appoint one of the assistant commissioners to have and to exercise all his powers. The Commissioner and his assistants shall each execute and file with the Secretary of State a bond, payable to the State of North Carolina, in the sum of five thousand dollars for the Commissioner and twenty-five hundred dollars for each assistant, with sureties to be approved by the Secretary of State, the condition being that they will faithfully perform their duties and will account for and pay over, pursuant to law, all moneys received by them in their office. (1915, c. 84, s. 1; 1917, c. 290, s. 1; C. S., s. 1870; 1925, c. 310.)

Editor's Note.—By the 1925 amendment three assistants were allowed the Commissioner, where prior thereto he was allowed only two.

An indemnity contract or bond, which was neither in the amount nor "conditioned" as required by this section, did not

cover a claim of damages for false imprisonment committed by an assistant fisheries commissioner under color of his office, and the surety is not liable thereunder to plaintiff. *Midgett v. Nelson*, 214 N. C. 396, 199 S. E. 393 (1938).

§ 113-130. **Fish inspectors.**—The Commercial Fisheries Commissioner may appoint, with the approval of the Board, inspectors in each county having fisheries under his jurisdiction. These inspectors shall serve under the direction of the Commissioner and assist him at such times as he may require. (1915, c. 84, s. 2; C. S., s. 1871.)

§ 113-131. **Commissioner of Commercial Fisheries and assistants not to be financially interested in fisheries.**—The Commercial Fisheries Commissioner, assistant fisheries commissioners and inspectors shall not be financially interested in any fishing industry in North Carolina. (1915, c. 84, s. 8; C. S., s. 1872; 1921, c. 194, s. 1.)

§ 113-132. **Clerical force and office for Commercial Fisheries Commissioner.**—The Commissioner of Commercial Fisheries shall rent and equip an office, which will be adequate for his business, in some town conveniently located to the maritime fisheries, and he is authorized with the consent of the Board to employ such clerks and other employees as may be necessary for the proper carrying on of the work of his office. (1915, c. 84, s. 3; C. S., s. 1873.)

§ 113-133. **Boats and equipment for Commercial Fisheries Commissioner.**—The Commercial Fisheries Commissioner is authorized, with the consent of the Board, to purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to fulfill the duties specified in this chapter. (1915, c. 84, s. 4; C. S., s. 1874.)

§ 113-134. **“Commercial Fisheries Fund” derived from imposts.**—All license fees, taxes, rentals of bottoms for oyster or clam cultivation and other imposts upon the fisheries, in whatever manner collected, shall, except as otherwise provided in this chapter, be deposited with the State Treasurer to the credit of the Commercial Fisheries Fund, to be drawn upon as directed by the Board. (1915, c. 84, s. 9; C. S., s. 1875.)

ARTICLE 13.

Powers and Duties of Board and Commissioners.

§ 113-135. **Duties of the Board.**—It is the duty of the Board of Conservation and Development, through its agents, the Commissioner of Game and Inland Fisheries and the Commissioner of Commercial Fisheries and their assistants:

To enforce all acts relating to the fish and fisheries of North Carolina.

To make regulations that will keep open for the passage of fishes all inlets and not less than one-third of the width of all sounds and streams, or such greater proportions of their width as may be necessary.

To make such rules and regulations as they think proper to procure statistics as to the annual products of the fisheries of the State.

To collect and compile statistics showing the annual product of the fisheries of the State, the capital invested, and the apparatus employed, and any fisherman refusing to give these statistics shall be refused a license for the next year. Provided, however, the Board may extend the time of his operations if any fisherman fail or refuse to give statistics as required in this section.

To prepare and have on file maps based on the charts of the United States Coast and Geodetic Survey, of the largest scale published, showing as closely as may be the location of all fixed apparatus employed during each fishing season.

To have surveyed and marked in a prominent manner those areas of waters of the State in which the use of any or all fishing appliances are prohibited by law or regulation, and those areas of waters in the State in which oyster tonging or dredging is prohibited by law.

To prosecute all violations of the fish laws, and whenever necessary, to employ counsel for this purpose.

To remove pending trial nets or other appliances found being fished or used in violation of the fisheries laws of the State.

To carry on investigations relating to the migrations and habits of the fish in the waters of the State, also investigations relating to the cultivation of the oyster, clam, and other mollusca, and of the terrapin and crab, and for this purpose to employ scientific assistance.

To collect all license fees, rentals, or other imposts, and to pay them into the State treasury to the credit of the proper fisheries fund. On or before the twenty-fifth day of each month there shall be mailed to the Treasurer of the State a consolidated statement showing the amount of taxes and license fees collected during the preceding month, and by and from whom collected.

To administer oaths and to send for and examine persons and papers; the commissioners also shall have this power. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883.)

§ 113-136. Regulations as to fish, fishing, and fisheries made by Board.—The Board of Conservation and Development is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State; and to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, escallops, and other water products, and all types of marine vegetation which may grow in the waters or on the bottoms of any navigable waters, as it may deem necessary; and all regulations, prohibitions, restrictions, and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this section; and any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776.)

Editor's Note.—The 1925 amendment inserted the provision for the regulation of the transportation of fish, etc.

The 1945 amendment inserted the provision as to marine vegetation.

The jurisdiction of the Board extends to all the public waters of the State or over which it has control. "The several waters of the State" is the precise language of the section, and the numerous portions of the law in which places are expressly mentioned are not in restriction of the general words of the section, but these places are only mentioned because special provision is made as being desirable or necessary for them. *State v. Dudley*, 182 N. C. 822, 109 S. E. 63 (1921).

Regulations within Police Power.—It is fully established that fish, including oysters and other shellfish, as well as game, being a valued source of food supply, come well within the police power of the State

and are subject to rules and regulations reasonably designed to protect them and promote their increase and growth, and that such rules and regulations may not be set aside or ignored because they indirectly affect or trench upon some private rights that are, or would be, ordinarily recognized. *Rea v. Hampton*, 101 N. C. 51, 7 S. E. 649 (1888); *Daniels v. Homer*, 139 N. C. 219, 51 S. E. 992 (1905); *State v. Sermons*, 169 N. C. 285, 84 S. E. 337 (1915).

The Taking of Escallops.—The Fisheries Commission Board [now the Board of Conservation and Development] may establish a formal rule or regulation, which prohibits the taking of escallops with drags or scrapes in certain waters, and a violation of this rule will warrant conviction. *State v. Dudley*, 182 N. C. 822, 109 S. E. 63 (1921).

§ 113-137. Regulations affecting existing interests not effective for two years.—In making regulations the Board shall give due weight and consideration to all factors which will affect the value of the present investment in the fish-

eries, and no changes in the existing laws which, if they should go into effect immediately, would tend to cause fishermen to lose their property shall go into effect until two years from the date that the change has been made by the Board. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1879.)

§ 113-138. Hearing before changes as to certain regulations.—If, however, a petition signed by five or more voters of the district or community which will be affected by the proposed changes is filed with the Board through the commissioners, their assistants or deputies, asking that they have a hearing before any proposed change in the territory, size of mesh, length of net, or time of fishing shall go into effect, petitioning that they be heard regarding such change, the Board shall in that event designate by advertisement for a period of thirty days at the courthouse and three other public places in the county affected, and also by publication in a newspaper of the county, if such is published in said county, once a week for two consecutive weeks, a place at which said Board will meet and hear argument for and against said change, and may ratify, rescind, or alter this previous order of change as may seem just in the premises. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1880.)

§ 113-139. Reports of Board to legislature; publication.—The Board shall cause to be prepared and submitted to each legislature a report showing the operations, collections and expenditures of the Board; and it shall also cause to be prepared for publication such other reports, with necessary illustrations and maps, as will adequately set forth the results of the work and the investigations of the Board, all such reports, illustrations, and maps to be printed and distributed at the expense of the State, as are other public documents, as the Board may direct. (1915, c. 84, s. 15; C. S., s. 1882.)

§ 113-140. Violations investigated; nets seized and sold; bonds of Commissioners liable.—It is the duty of the Commissioner of Game and Inland Fisheries and the Commissioner of Commercial Fisheries, or any of their assistants or deputies, upon a complaint made either orally or in writing, stating that any of the laws relating to fish or fisheries are being violated at any particular place, to go to such place and investigate same. They shall seize and remove all nets or other appliances set or being used or that have been used in violation of the fisheries laws of the State, sell them at public auction after advertisement for twenty days at the courthouse and three other public places in the county in which the seizure was made, and apply the proceeds of sale to the payment of costs and expenses of such removal, and pay any balance to the school fund of the county nearest to where the offense is committed. The failure of the Commissioners or their deputies to perform the above prescribed duty shall render their bonds liable to a penalty of five hundred dollars, one half to go to the informant and the other one half to be paid to the school fund of the county in which the action is brought. (1911, c. 18; C. S., s. 1884; 1941, c. 113.)

Editor's Note.—The 1941 amendment inserted after the word "used" in the second sentence the words "or that have been used."

The authority to summarily destroy nets used in violation of the law for the protec-

tion of fish is a lawful exercise of police power of the State and does not deprive the citizen of his property without due process of law. *Daniels v. Homer*, 139 N. C. 219, 51 S. E. 992 (1905).

§ 113-141. Arrests without warrant; investigation of unlawful transportation of sea food.—The Commissioner of Game and Inland Fisheries and the Commissioner of Commercial Fisheries, their assistants and deputies, shall have power, without warrant, to arrest any person or persons violating any of the fishery laws in their presence, who shall be carried before a magistrate for trial as is required by law in case of persons arrested without warrant. Authority also expressly is vested in the commissioners, their assistants and depu-

ties, when they or either of them has reason to believe that any sea food products are unlawfully possessed, or are being transported unlawfully, or are about to be transported unlawfully, without the license tax therefor and thereon having been paid, to stop, or cause to be stopped, any vehicle or conveyance of transportation, of whatsoever kind, for the purpose of investigation and examination; and if upon such investigation and examination it appears that any sea food products are unlawfully possessed, or that the license tax therefor and thereon has not been paid, the said commissioners, their assistants or deputies, making such investigation and examination shall have the power and authority, without first having applied for and obtained warrant so to do, to arrest the person or persons owning and/or having in his or their possession for transportation and actually engaged in the transportation of the said sea food products on which said license taxes have not been paid, and take him, or them, for trial before some magistrate in the county where such arrest is made; and it shall not be obligatory upon the said commissioners, their assistants or deputies, first to apply for and obtain warrant before making such investigation and inspection. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118.)

Editor's Note. — The 1935 amendment gave the authority to investigate the unlawful transportation of sea food.

§ 113-142. **Taking fish for scientific purposes.**—The Board and the United States Fish and Wild Life Service may take and cause to be taken for scientific purposes or for fish culture any fish or other marine organism at any time from the waters of North Carolina, any law to the contrary notwithstanding; and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture: Provided, that in taking fish for fish culture in the hatcheries of this State the fish shall only be taken while the hatcheries are in operation and only between the hours of four and eleven p. m. (1915, c. 84, s. 7; C. S., s. 1886.)

§ 113-142.1. **Selling and replacing boats, etc.; Special Commercial Fisheries Equipment Fund.**—The Board of Conservation and Development is hereby authorized and empowered in its discretion from time to time to dispose of by sale through the State Division of Purchase and Contract, any boats, vessels, gear or equipment used by the Department of Conservation and Development or its agents in its program of enforcement of the laws and regulations governing commercial fishing, whenever in the judgment of the Board of Conservation and Development any such boat, vessel, gear or equipment has become obsolete or is no longer necessary or suitable for effective use in such law enforcement program.

The net proceeds of the sale of any properties made under the authority of this section shall be placed in a "Special Commercial Fisheries Equipment Fund" to be used by the Board of Conservation and Development from time to time and in its discretion solely for the following purposes, namely: For purchasing through the Division of Purchase and Contract, such boats, vessels, aircraft, watercraft, gear or equipment as, in the judgment of the Board of Conservation and Development, will contribute to a more effective enforcement of the laws and regulations governing commercial fishing. (1951, c. 573.)

ARTICLE 14.

Licenses for Fishing in Inland Waters.

§ 113-143. **Fishing licenses for persons above 16 years of age.**—In order to raise revenue with which to maintain and operate the State fish hatcheries, provide additional nurseries and administer the inland fishing laws, a license is hereby required of all persons above the age of sixteen (16) years

to fish by any and all methods of hook and line or rod and reel fishing in the waters of North Carolina. (1929, c. 335, s. 1; 1945, c. 567, s. 1.)

Editor's Note. — The 1945 amendment ~~struck out the words "other than in waters of the county in which such person perma-~~ nently resides or in waters abutting thereon, as hereinafter provided" formerly appearing at the end of this section.

§ 113-144. Resident State license.—Any person, upon application to the Director of the Department of Conservation and Development, his assistants, wardens, or agents, authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a bona fide resident of the State of North Carolina, shall, upon the payment of a license fee of three dollars (\$3.00) for the use of the Department and a fee of ten cents (10c) for the use of the official authorized to issue licenses, be entitled to a "resident State license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under the preceding section: Provided that twenty-five cents (25c) of this fee shall be set aside as a special fund for the purchase and lease of lands and waters, to be developed for the protection and propagation of fish or to be used for public fishing, or for the purpose of securing federal funds, if available, for the purposes described above through the means of matching federal funds in such proportion as the federal laws may require, and that twenty-five cents (25c) of each such fee shall be expended by such Commission, in its discretion, for the purposes of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. (1929, c. 335, s. 2; 1945, c. 567, s. 2; 1949, c. 1203, s. 2.)

Editor's Note.—The 1945 amendment increased the fee from two to three dollars and added the proviso. The 1949 amendment rewrote the proviso.

Use of Unexpended Funds.—See note to § 113-95.

§ 113-144.1. Licenses for service men.—All members of the armed forces of the United States stationed at a military facility in North Carolina shall be required to meet State fishing license requirements, as provided by this article, in any inland waters within the State including any inland waters under jurisdiction of the armed forces; provided, however, that any member of the armed forces who is a nonresident of North Carolina, and who is assigned to active duty at a military facility in North Carolina, shall be entitled to purchase a resident State fishing license without regard to State residence requirements. (1951, c. 1112, s. 2.)

§ 113-145. Nonresident State licenses.—Any person, without regard to age or sex, upon application to the Director of the Department of Conservation and Development, his assistants, wardens or agents authorized in writing to issue licenses, and the presentation of satisfactory proof that he is a nonresident of the State, shall, upon the payment of six dollars (\$6.00) for the use of the Department and ten cents (10c) for the use of the official authorized in writing to issue licenses, be entitled to a "nonresident State fishing license" which will authorize the licensee to fish in any of the waters of North Carolina as provided under § 113-143: Provided that fifty cents (50c) of the "nonresident State fishing license" fee referred to above shall be set aside as a special fund for the purchase and lease of lands and waters to be developed for the protection and propagation of fish and for the acquisition by lease or purchase of waters for public fishing: Provided further, that any nonresident of the State desiring to fish for one day or more in the waters of the State of North Carolina may do so upon payment to the clerk of the court or game warden of the county in which the nonresident desires to fish the sum of one dollar and ten cents (\$1.10) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of one dollar and ten cents (\$1.10) the clerk of the court or game warden shall issue a permit allowing said nonresident to fish: Provided further, that any nonresident of the State desiring to fish for five days

or less in any of the waters of North Carolina may do so upon payment to any authorized agent of the Department the sum of two dollars and sixty cents (\$2.60) for each such period, the sum of two dollars and fifty cents (\$2.50) of said sum for the use of the Department and the sum of ten cents (10c) for the use of the selling agent, and upon payment of the prescribed amount said non-resident shall be entitled to a "nonresident tourist license": Provided further, that any resident of the State desiring to fish for one day or more in the waters of any county in the State of North Carolina other than the county within which he resides may do so upon payment to the clerk of the court or game warden of a county in which he desires to fish the sum of sixty cents (60c) for each day, the sum of ten cents (10c) of said sum to go to the selling agent of said license or permit, and upon the payment of said sum of sixty cents (60c), the clerk of the court or game warden shall issue a permit allowing said nonresident to fish: Provided further, that any nonresident twelve years of age or under regardless of sex shall be allowed to fish in the waters of North Carolina without paying any of the license or permit fees set forth in this section. (1929, c. 335, s. 3; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; 1945, c. 567, s. 3.)

Editor's Note. — The 1931 amendment increased the first fee mentioned in the section from three to five dollars. The 1933 amendment inserted the proviso relating to short time licenses for nonresidents. The 1935 amendment increased the

fee for such licenses, and added the proviso relating to short time licenses for residents. The 1945 amendments added the first, third and last provisos, and increased the fee first mentioned in the section from five to six dollars.

§ 113-146. County licenses.—Any person who has lived in any county in North Carolina for a period of six months is deemed a resident of that county for the purpose of this section and upon application to the Director of the Department of Conservation and Development, his assistants, wardens, or agents authorized to issue licenses, and the presentation of satisfactory proof that he is a resident of the county, shall, upon the payment of one dollar (\$1.00) for the use of the Department and ten cents (10c) for the use of the official authorized to issue licenses, be entitled to a "resident county fishing license," which will authorize the licensee to fish in any of the waters of that county: Provided, that said resident county license shall be required only of those persons using lures or baits of an artificial type. Artificial lures or baits are defined as lures or baits which are made by hand or manufactured and which are not available as natural fish foods. (1929, c. 335, s. 4; 1945, c. 567, s. 4.)

Local Modification. — Catawba: 1939, c. 181.

rewrote this section. It formerly also related to daily fishing permits.

Editor's Note. — The 1945 amendment

§ 113-147. Clerk of superior courts may sell licenses and account for same to Department.—In addition to the wardens and agents of the Department of Conservation and Development authorized to sell fishing licenses as hereinbefore provided, upon written application, any clerk of superior court of North Carolina shall also be authorized and empowered to sell fishing licenses and shall account therefor to the Department in the same manner as wardens, and the handling of said licenses shall then become an official duty of such clerk of superior court. (1929, c. 335, s. 5.)

§ 113-148. Department to furnish forms; what licenses must show; signature of licensee; licenses to become void on December 31 of year issued.—All licenses shall be issued on forms prepared and supplied by the Department of Conservation and Development, the cost of which shall be paid from any funds that may come into its hands from the sale of fishing licenses. The license shall show the name, age, occupation and residence of the licensee and the date of its issuance. It shall also contain the signature of the licensee and shall authorize the person named therein, in all cases where a resident county li-

cense is bought, to fish in any of the waters within the county in which the applicant permanently resides, under the restrictions and requirements of existing laws and the rules and regulations of the Department during the year, the date of which is inscribed thereon. In all cases where either resident or non-resident State fishing licenses are bought, they shall also contain the signature of the licensee and shall authorize the person named therein to fish in any of the waters of the State of North Carolina under the restrictions and requirements of existing laws and regulations of the Department during the year, the date of which is inscribed thereon. All licenses issued under and by virtue of this article shall become void on the thirty-first day of December next following the date of issuance. The licenses may contain such other information as the Department may require. (1929, c. 335, s. 6; 1945, c. 567, s. 5.)

Editor's Note. — The 1945 amendment struck out the former provision relating to license buttons.

§ 113-149. Record of all licenses issued to be kept.—All clerks of superior court in various counties of the State who make application as hereinbefore provided, also assistants, wardens or agents who are authorized to issue fishing licenses shall keep such record of licenses issued by them as the Department of Conservation and Development may require and same shall be open at all times for inspection by any official charged with the enforcement of the fishing laws. (1929, c. 335, s. 7.)

§ 113-150. Reports.—Every clerk of superior court who issues fishing licenses under and by virtue of this article shall, on the first of each month forward to the Department of Conservation and Development a report covering the sale of licenses issued by them, on forms furnished by the Department and shall attach thereto check for amount due said Department. All assistants, wardens or agents authorized by the Department to issue fishing licenses shall make full and complete report of their sales as required by the Department. The full amount collected by each issuing officer, less the ten-cent fee on each license issued, must accompany each report. (1929, c. 335, s. 8.)

§ 113-151. Deposit of proceeds of licenses with State Treasurer; use of, by Department.—All moneys collected and received under and by virtue of this article, except the issuing fees, shall be deposited in the name of the State Treasurer as provided by §§ 147-77 to 147-84, and shall be used by the Department of Conservation and Development in the work of propagating and protecting game fish in North Carolina and in the administration of the inland fishing laws and for no other purpose. (1929, c. 335, s. 9.)

§ 113-152. Licenses to be kept about person of licensees.—No person shall fish as provided herein in any of the waters of North Carolina unless the license hereinbefore provided for be kept about the person of the licensee or exhibited upon the request of any official charged with the duty and responsibility of issuing licenses and enforcing the fishing law. (1929, c. 335, s. 10; 1945, c. 567, s. 6.)

Editor's Note. — The 1945 amendment struck out the former provision relating to license buttons.

§ 113-153. Transfer of licenses forbidden.—No person shall alter, loan or transfer any license authorized by this article, or give false or misleading information to any official authorized to issue licenses, in the application therefor. (1929, c. 335, s. 11.)

§ 113-154. Licenses not additional to propagation license; to what waters applicable.—No person required by law to procure a license to propagate

fish for sale, shall be required in addition to secure a license provided by this article in order to enable such person to exercise the rights conferred by the license. The provisions of this article shall not apply to the Atlantic Ocean, the sounds or other large bodies of water near the sea coast which do not, in the judgment of the Department of Conservation and Development, need to be stocked or protected; nor shall they prevent the owner of any land or members of his family under twenty-one years of age from fishing thereon without a license. (1929, c. 335, s. 13.)

§ 113-155. **Fishing without landowner's permission.** — If any person shall, without having first obtained permission of the owner, fish or attempt to catch fish from the land of another after being forbidden, either personally or by notices written or printed, posted at the courthouse door and at three places on said land, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (Code, s. 2831; 1895, c. 147; Rev., s. 3480; 1915, c. 271, s. 1; C. S., s. 2127.)

Cross Reference. — As to trespassing upon posted lands or waters to hunt, fish or trap, see §§ 113-120.1 through 113-120.4.

§ 113-156. **Persons having resided in State for six months presumed to be residents.** — All persons who have lived in this State for at least six months immediately preceding the date of making application for a license, shall be deemed resident citizens for the purpose of this article. (1929, c. 335, s. 14.)

§ 113-157. **Violation made misdemeanor; punishment.** — Any person violating the provisions of this article shall be guilty of a misdemeanor and on conviction shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days in the discretion of the court. (1929, c. 335, s. 15.)

ARTICLE 15.

Commercial Licenses and Regulations.

§ 113-158. **Licenses to fish; issuance, terms, and enforcement.** — Each and every person, firm, or corporation, before commencing or engaging in any kind of fishing in the State, shall file with an inspector of the county in which he desires to fish, or with the Commissioner of Commercial Fisheries or any of his assistant commissioners, a sworn statement as to the number and kind of nets, seines, or other apparatus intended to be used in fishing. Upon filing this sworn statement on oath the Commissioner shall issue or cause to be issued to the said party or parties a license as prescribed by law; said applicant shall pay a license fee equal in amount to the fee or tax prescribed by law for fishing different kinds of apparatus in the waters of the State of North Carolina, or for tonging or dredging for oysters, as the case may be. The Commissioner shall keep in a book especially prepared for the purposes an exact record of all licenses, to whom issued, the number and kinds of nets, boats, and other apparatus licensed, and the license fees received. He shall furnish to each person, firm, or corporation in whose favor a license is issued a special tag which will show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorized to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the Commissioner. All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet and on the opposite side of mainsail, above all reef points, in black letters not less than twenty inches long, the initial letter of the county granting the license and the number of said license, the number to be printed on canvas and furnished by the Commissioner. Any boat or vessel used in catching oysters without having complied with the provisions

of this section may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings, shall be paid into the school fund. The licenses to fish with nets shall all terminate on December thirty-first. Any person who shall willfully use for fishing purposes any kind of net whatever, without having first complied with the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars for each and every offense. (1915, c. 84, s. 10; 1917, c. 290, s. 9; C. S., s. 1887; 1945, c. 1008, s. 1.)

Local Modification. — Onslow: 1949, c. 889.

Editor's Note. — The 1945 amendment struck out the words "for which he shall receive the sum of fifty cents" formerly appearing at the end of the fifth sentence.

Seizure and Sale for Violation of Law.—Fishing in waters when prohibited by law is a public nuisance, and the General As-

sembly has the power to authorize a prompt abatement of the nuisance by seizure and sale of the nets subject to the right of their owner to contest the fact of his violation of the law by a proceeding of claim and delivery, or by injunction to prevent sale, or by action to recover the proceeds of sale and damages. *Daniels v. Homer*, 139 N. C. 219, 51 S. E. 992 (1905).

§ 113-159. Resident may catch shellfish for own use.—No tax shall be levied or collected from bona fide residents or citizens of this State who take fish, oysters, clams, escallops, or crabs other than with dredges for his own personal or family's use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars or imprisoned not exceeding thirty days. (1917, c. 290, s. 6; C. S., s. 1888.)

§ 113-160: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-161. Boats using purse seines or shirred nets; tax.—(a) All boats or vessels of any kind used in operating purse seines or shirred nets shall pay a license fee of one dollar and fifty cents (\$1.50) per ton on gross tonnage, customhouse measurement, which shall be independent of and separate from the seine or net tax on the seines or nets used on said boats or vessels. This license fee shall be for one year from January first of each year and shall not be issued for any period of less than one year.

(b) Any boat or vessel operating purse seines or shirred nets without first having complied with the provisions of this section shall be seized, forfeited, and advertised for twenty days at the courthouse door and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds of such sale, less the cost of the proceedings, shall be paid into the school fund of the county where seized. Any person, firm, or corporation operating such boat or vessel in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) All operators of boats or vessels of any kind used in operating purse seines or shirred nets shall apply for and obtain a license for each such purse seine or shirred net, and shall pay for such license a tax in the amount of ten dollars (\$10.00): Provided, that the tax herein levied on purse seines or shirred nets shall be in lieu of all other taxes levied by law against such seines or nets.

(d) Nothing in this section shall apply to boats fishing for edible fish. (1915, c. 84, s. 12; 1917, c. 290, s. 3; 1919, c. 333, s. 3; C. S., s. 1890; 1933, c. 106, s. 2; 1939, c. 191; 1945, c. 1008, s. 3; 1951, c. 1045, s. 1.)

Local Modification. — Onslow: 1949, c. 889.

Editor's Note. — The 1933 amendment changed the amount of the fee required in subsection (a). The 1939 amendment made

changes in subsection (a) and added subsections (b)-(e). The 1945 amendment increased the license fee in subsection (a) and the license tax in former subsection (d), now (c). The 1951 amendment re-

pealed former subsection (c) and renumbered former subsections (d) and (e) as (c) and (d).

For comment on the 1939 amendment, see 17 N. C. Law Rev. 379.

§ 113-162. Licenses for various appliances and their users; schedule.

—The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina by residents of the State:

Anchor gill nets, one dollar (\$1.00) for each hundred yards or fraction thereof.

Stake gill nets, fifty cents (50c) for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, one dollar (\$1.00) for each hundred yards or fraction thereof.

Pound nets, two dollars (\$2.00) on each pound; the pound is construed to apply to that part of the net which holds and from which fish are taken.

Submarine pounds, or submerged trap nets, two dollars (\$2.00) for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, one dollar (\$1.00) each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, one dollar (\$1.00) per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, one dollar (\$1.00) per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, one dollar (\$1.00) per one hundred yards or fraction thereof.

Fyke nets, one dollar (\$1.00) each.

Motor boats used in hauling nets, five dollars (\$5.00) for each boat.

Power boats used in sink net fishing in the Atlantic Ocean, five dollars (\$5.00) for each boat.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina by nonresidents of the State:

Anchor gill nets, two dollars (\$2.00) for each hundred yards or fraction thereof.

Stake gill nets, one dollar (\$1.00) for each hundred yards or fraction thereof: Provided, that when any person uses more than one such net the tax shall be imposed upon the total length of all nets used and not upon each net separately.

Drift gill nets, two dollars (\$2.00) for each hundred yards or fraction thereof.

Pound nets, four dollars (\$4.00) on each pound; the pound is construed to apply to that part of the net which holds and from which the fish are taken.

Submarine pounds, or submerged trap nets, four dollars (\$4.00) for each trap or pound.

Seines, drag nets and mullet nets under one hundred yards, two dollars (\$2.00) each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, two dollars (\$2.00) per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, two dollars (\$2.00) per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, two dollars (\$2.00) per one hundred yards or fraction thereof.

Fyke nets, two dollars (\$2.00) each.

Motor boats used in hauling nets, ten dollars (\$10.00) for each boat.

Power boats used in sink net fishing in the Atlantic Ocean, ten dollars (\$10.00) for each boat.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used. (1915, c. 84, s. 14; 1917, c. 290, s. 5; 1919, c. 333, s. 3; C. S., s. 1891; 1925, c.

168, s. 1; 1927, c. 59, ss. 5, 7; 1931, c. 117; 1933, c. 106, s. 3; 1933, c. 433; 1945, c. 1008, s. 4; 1951, c. 1045, s. 1.)

Local Modification. — Onslow: 1949, c. 889. rewrote this section, as changed by the former amendments.

Editor's Note. — The 1951 amendment

§ 113-163. **License tax on dealers and packers.**—An annual license tax, for the year beginning January 1st in each year, to be collected by the Commissioner of Commercial Fisheries, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On oysters, twenty-five dollars (\$25.00) as provided in Article 16A; escallops, five dollars (\$5.00); clams, five dollars (\$5.00); crabs, five dollars (\$5.00); fish, ten dollars (\$10.00); shrimp, five dollars (\$5.00): Provided, no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets.

An annual license tax for the year beginning January 1st in each year, to be collected by the Commissioner of Commercial Fisheries, is imposed on all non-resident persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On clams, twenty-five dollars (\$25.00); crabs, twenty-five dollars (\$25.00); escallops, twenty-five dollars (\$25.00); fish, twenty-five dollars (\$25.00); shrimp, twenty-five dollars (\$25.00).

Any person, firm, corporation or syndicate engaged in the processing of menhaden fish within the borders of the State of North Carolina, shall pay an annual license tax, to be collected by the Commissioner of Commercial Fisheries, on each plant so operated, as follows: On fish scrap and oil extracting or separating plant, one hundred dollars (\$100.00); dehydrating plant, twenty-five dollars (\$25.00). (1917, c. 290, s. 5; 1919, c. 333, ss. 1, 2; C. S., s. 1892; 1933, c. 106, s. 4; 1945, c. 1008, s. 5; 1951, c. 1045, s. 1.)

Local Modification. — Onslow: 1949, c. 889.

Editor's Note. — The 1933 amendment changed the tax in the first paragraph, and deleted a former provision requiring a license tax of fifty cents a year for shucking or selling oysters and clams on local markets by retail.

The 1945 amendment increased the license tax in the first paragraph.

The 1951 amendment increased the license tax imposed on the business of canning, etc., oysters from \$5.00 to \$25.00 in order to comply with § 113-216.2. The amendment also added the second and third paragraphs.

§ 113-164: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-165. **License tax on trawl boats.**—There shall be levied annually upon each trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of one dollar and fifty cents (\$1.50) per gross ton, and on each trawl boat, or boat used for trawling purposes, not documented in the customs house a license tax of five dollars (\$5.00), and a tax of five dollars (\$5.00) for each net. There shall be levied annually upon each nonresident trawl boat, or boat used for trawling purposes, documented in the customs house, a license tax of three dollars (\$3.00) per gross ton, and on each nonresident trawl boat, or boat used for trawling purposes, not documented in the customs house, a license tax of ten dollars (\$10.00), and a tax of ten dollars (\$10.00) for each net. (1933, c. 106, s. 6; 1945, c. 1008, s. 7; 1951, c. 1045, s. 1.)

Local Modification.—Onslow: 1949, c. 889. increased the license tax in the first sentence, and the 1951 amendment added the second sentence.

Editor's Note. — The 1945 amendment

§ 113-166. **Printed regulations furnished dealers.**—It is the duty of the Commissioner of Commercial Fisheries, upon issuing any license under the provisions of this subchapter to furnish with said license the printed regulations con-

trolling the waters in which such fisherman applying therefor proposes to fish. (1917, c. 290, s. 12; C. S., s. 1894.)

§ 113-167. **Dealers to keep and furnish statistics.**—All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, escallops, clams, crabs, shrimp, and fish taken from the public grounds or natural beds of the State, or the natural waters or streams of the State, shall keep a permanent record of all such products, showing the quantity of each of said products so purchased, packed, canned, or shipped, the kind of fish, from whom each of said species of fish, mollusca, or crustaceans were purchased. A statement of all these facts shall be made whenever required by the Commissioner, but shall be at least at the end of each month. All such records shall be open at all times to the Commissioner, assistant Commissioner, or any one under the direction of the Commissioner. (1917, c. 290, s. 11; C. S., s. 1895.)

§ 113-168. **Disturbing marks or property of Board prohibited.**—Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the Board in marking the restricted areas relating to any and all fishing, or marking other areas in which oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, or shall injure or destroy any boat or other property of any kind used by the Board or any officer or employee thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court; and any person anchoring or mooring a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars and imprisoned thirty days in jail, at the discretion of the court. (1915, c. 84, s. 22; 1917, c. 290, s. 8; C. S., s. 1896.)

§ 113-169: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-170. **Explosives, drugs, and poisons prohibited.**—It shall be unlawful to place in any of the waters of this State any dynamite, giant or electric powder, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking, killing or injuring fish. And anyone violating this section shall, upon conviction, be fined not less than one hundred dollars and imprisoned not less than thirty days. (1915, c. 84, s. 19; C. S., s. 1897.)

Indictment Held Insufficient.—An indictment charging that defendants did unlawfully take fish with the use of dynamite and explosives is insufficient to charge the statutory offense of placing explosives in

waters of the State for the purpose of taking, killing or injuring fish, and defendants' motion in arrest of judgment should be allowed. *State v. Miller*, 231 N. C. 419, 57 S. E. (2d) 392 (1950).

§ 113-171. **Possession of fish killed by explosives as evidence.**—The possession of fish killed by explosive agencies shall be prima facie evidence that explosives were used for the purpose of killing fish by the person in possession thereof. (Code, s. 3405; 1889, c. 312; Rev., s. 2466; 1911, c. 170; C. S., s. 1898.)

§ 113-172. **Discharge of deleterious matter into waters prohibited.**—It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the State any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said water; and any person, persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: Provided, this section shall not apply to corporations chartered either by general law or special act before the 4th day of March, 1915. (1915, c. 84, s. 20; C. S., s. 1899.)

Section Is Unconstitutional.—The proviso of this section exempting corporations

chartered prior to March 4, 1915, from the proscription against emptying into streams

of the State deleterious or poisonous substances inimical to fish, creates a distinction having no relation to the evil sought to be remedied and renders the statute unconstitutional for failure to apply alike to all corporations or persons similarly situated. *State v. Glidden Co.*, 228 N. C. 664, 46 S. E. (2d) 860 (1948).

However, the contention that this section is offensive to the Constitution is that

without due process of law it deprives or may deprive any person of property rights is not well taken. No matter how long the practice of polluting the waters by waste products from mining or manufacturing has been practiced, there is no proscription against the State when it sees fit to remedy the evil. *State v. Glidden Co.*, 228 N. C. 664, 46 S. E. (2d) 860 (1948).

§ 113-173. Operation of boats in violation of rules and laws forfeits boats and apparatus.—If any person, firm, or corporation shall use or operate any boat or vessel of any kind, in violation of any rule of the Board, or any of the fish laws, it shall be the duty of the Board to revoke any license issued and seize such boat or vessel and any apparatus or appliance so used or operated; but the Board shall have authority to compromise by agreement with the owner of such boat or appliance for any such violation, and may return such boat or appliance so seized to the owner and reinstate license. (1919, c. 333, s. 5; C. S., s. 1900.)

Cross Reference. — See §§ 113-140 and 113-158.

§ 113-174. Violations of fisheries law misdemeanor; licenses forfeited.—Upon failure of any person, firm or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm or corporation may be revoked by the Board, and upon satisfactory settlement may be reinstated, with the consent of the Board. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor. (1917, c. 290, s. 11; 1919, c. 333, s. 4; C. S., s. 1901.)

ARTICLE 16.

Shellfish; General Laws.

§ 113-175. Oyster bed defined.—A natural oyster or clam bed, as distinguished from an artificial oyster or clam bed, shall be one not planted by man, and is any shoal, reef or bottom where oysters are to be found growing in sufficient quantities to be valuable to the public. (1893, c. 287, s. 1; Rev., s. 2371; C. S., s. 1902.)

§ 113-176. Board to lease.—The Board shall have power to lease to any duly qualified person, firm or corporation, for purposes of oyster or clam culture, any bottom of the waters of the State not a natural oyster bed, as defined in this article, nor a clam reservation, as defined in this article, in accordance with the provisions of this article. (1909, c. 871, ss. 1, 9; 1919, c. 333, s. 6; C. S., s. 1903.)

§ 113-177. Lessee to be citizen.—Any citizen of North Carolina, or firm or corporation organized under the laws of the State and doing business within its limits, shall be granted the privilege of taking up bottoms for purposes of oyster or clam culture, under the provisions of this article. (1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; C. S., s. 1904.)

§ 113-178. Areas leased in different waters.—The area which may be taken up for purposes of oyster or clam culture shall be not less than one acre nor more than fifty acres, with the exception of the open waters of Pamlico Sound (and for the purposes of this article open waters of Pamlico Sound shall mean the waters that are outside of two miles of the shore line), in which the minimum limit shall be five acres and the maximum shall be two hundred acres:

Provided that the limit of entry in Core Sound, North River, Newport River, Bogue Sound, and all bays and creeks bordering on these waters, and in Jones Bay, Rose Bay, Abels Bay, Swan Quarter Bay, Middle Bay, Bay River, Deep Bay, Juniper Bay, West and East Bluff Bays, Wysocking Bay, Fire Creek, Stumpy Point Bay, Mouse Harbor Bay, Maw Bay and Broad Creek, tributaries of Pamlico Sound, shall be one acre as a minimum and ten acres as a maximum: Provided further, however, that after March 9, 1910, the minimum area in Core Sound, North River, Newport River, Bogue Sound, and all bays and creeks bordering on these waters, and in Jones Bay, Rose Bay, Abels Bay, Swan Quarter Bay, Middle Bay, Bay River, Deep Bay, Juniper Bay, West and East Bluff Bays, Wysocking Bay, Fire Creek, Stumpy Point Bay, Mouse Harbor Bay, Maw Bay and Broad Creek, tributaries of Pamlico Sound, shall be one acre and the maximum fifty acres; but no person, firm, corporation or association shall severally or collectively hold any interest in any lease or leases aggregating an area of greater than fifty acres, except in the open waters of Pamlico Sound, where the aggregate area shall be two hundred acres. (1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; C. S., s. 1905; Ex. Sess. 1921, c. 46, s. 1.)

Local Modification. — Brunswick, New Hanover, Pender: C. S. 1905.

§ 113-179. Prerequisites for lease; application; deposit; survey; location.—Such persons, firms or corporations desiring to avail themselves of the privileges of this article shall make written application, on a form to be prepared by the Board, setting forth the name and address of the applicant, describing as definitely as may be the location and extent of the bottom for which application is made, and requesting the survey and leasing to the applicant of said bottom. As soon as possible after the application is received, the Commissioner of Commercial Fisheries shall cause to be made a survey and map of said bottom at the expense of the applicant. The Commissioner shall also thoroughly examine said bottoms by sounding and by dragging thereover a chain to detect the presence of natural oysters. Should any natural oysters be found, the Commissioner shall cause examination to be made to ascertain the area and density of oysters on said bottom or bed, to determine whether the same is a natural bed, under the definition contained in this article. He shall be assisted in this examination on tonging ground by an expert tonger, to be appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert tonger may be able to take in a specified time; and on dredging ground the Commissioner shall be assisted by an expert dredger, appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert dredger may be able to take in a specified time. The Commissioner shall require the bodies of bottoms applied for to be as compact as possible, taking into consideration the shape of the body of water and the consistency of the bottom. No application shall be entertained nor lease granted for a piece of bottom within two hundred yards of a known natural bottom, bed or reef. A deposit of ten dollars will be required of each applicant at the time of making his application, said sum to be credited to the cost of the survey of the bottom applied for. (1909, c. 871, ss. 3, 9; 1919, c. 333, s. 6; C. S., s. 1906.)

§ 113-180. Execution of lease; notice and filing; marking and planting.—Immediately upon the completion of the survey and the mapping thereof, and the payment by the applicant of the cost of said survey and map,

the Commissioner of Commercial Fisheries shall execute to the applicant, upon a form approved by the Attorney General of the State, a lease for the bottoms applied for. A copy of the lease, map of the survey and a description of the bottom, defining its position, shall be filed in the office of the Commissioner. After the execution of said lease, the lessee shall have the sole right and use of said bottoms, and all shells, oysters and culls thereon or placed thereon shall be his exclusive property so long as he complies with the provisions of this law. The lessee shall stake off and mark the bottoms leased in the manner prescribed by the Commissioner, and failure to do so within a period of thirty days of an order so to do issued by the Commissioner shall subject said lessee to a fine of five dollars per acre for each sixty days' default in compliance with said order. The corner stakes, at least, of each lease shall be marked with signs plainly displaying the number of the lease and the name of the lessee. The lessee shall, within two years of the commencement of his lease, have planted upon his holdings a quantity of shells equal to an average of fifty bushels of seed oysters or shells per acre of holdings, and within four years from the commencement of his lease a quantity of oysters or shells equal to an average of not less than one hundred and twenty-five bushels per acre. The Commissioner shall, upon granting any lease, publish a notice of the granting of same in a newspaper of general circulation in the county wherein the bottom leased is located. (1909, c. 871, ss. 4, 9; 1919, c. 333, s. 6; C. S., s. 1907.)

§ 113-181. Term and rental.—All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of fifty cents per acre per year for the first ten years and one dollar per acre per year for the next ten years of the lease, payable annually in advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years, of the lease. This rental shall be in lieu of all other taxes and imposts whatever, and shall be considered as all and the only taxation which can be imposed by the State, counties, municipalities or other subordinate political bodies. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding. (1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6; C. S., s. 1908; 1933, c. 346.)

Editor's Note.—The rental fees were reduced by the 1933 amendment.

§ 113-182. Nature of lessee's rights; assignment and inheritance.—The said lease shall be heritable and transferable, in whole or in part, provided the qualifications of the heirs and transferees are such as are described by this article. Nonresidents, acquiring by inheritance or process sale, or persons already holding the maximum area permitted by this article, shall within a period of twelve months from the time of acquisition dispose of said prohibited or excess of holding to some qualified person, firm or corporation, under penalty or forfeiture. The lease shall be subject to mortgage, pledge, seizure for debt and the same other transactions as are other property rights in North Carolina. No transfer shall be of effect unless of court record, until entered on the books of the Commissioner of Commercial Fisheries. (1909, c. 871, ss. 6, 9; 1919, c. 333, s. 6; C. S., s. 1909.)

§ 113-183. Renewal of lease.—The term of each lease granted under the provisions of this article shall be for a period of twenty years from the first day of April preceding the date of granting of said lease. At the expiration of the

first lease, the lessee, upon making written application on the prescribed form, shall be entitled to successive leases on the same terms as applied to the last ten years of the first lease, for a period not exceeding ten years each. (1909, c. 871, ss. 7, 9; 1919, c. 333, s. 6; C. S., s. 1910.)

§ 113-184. Forfeiture of lease for nonpayment.—The failure to pay the rental of bottoms leased for each year in advance on or before the first day of April, or within thirty days thereafter, shall ipso facto cancel said lease and shall forfeit to the State the said leased bottoms and all oysters thereon, and upon said forfeiture the Commissioner of Commercial Fisheries is hereby authorized to lease the said bottoms to any qualified applicant therefor: Provided, that no forfeiture shall be valid, however, under the provisions of this section, unless there shall have been mailed by the Commissioner to the last address of the lessee upon the books of the Commissioner a thirty days' notice of the maturity of said rental. (1909, c. 871, ss. 8, 9; 1919, c. 333, s. 6; C. S., s. 1911.)

§ 113-185. Contest over grant of lease; time for contest; decision; appeal.—If any person, within four months of the publication of the notice of granting of any lease, make claim that a natural oyster bottom, bed or reef exists within the boundaries of said lease, he shall, under oath, state his claim, and request the Commissioner of Commercial Fisheries to cancel the said lease: Provided, however, that each such claim and petition shall be accompanied by a deposit of twenty-five dollars. No petition unaccompanied by said deposit shall be considered by the Commissioner. The Commissioner shall, in person, examine into said claim, and, if the decision should be against the claimant, the deposit of twenty-five dollars shall be forfeited to the State and deposited to the credit of the Commercial Fisheries Fund. Should, however, the claim be sustained and a natural bed be found within the boundary of the lease, the said natural bed shall be surveyed and marked with stakes or buoys, at the expense of the lessee, and the said natural bed be thrown open to the public fishery. If no such claim be presented within a period of four months, or if when so presented it fail of substantiation, as provided, the lessee shall thereafter be secure from attack on such account, and his lease shall be incontestable so long as he complies with the other provisions of this article. In each and every such case the decision of the Commissioner shall be subject to review and appeal before a judge of the superior court, who shall render a decision without the aid of a jury, and his decision shall be final. (1909, c. 871, s. 9; 1919, c. 333, s. 6.)

§§ 113-186, 113-187: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-188. Nonresidents not to be licensed or hired as oystermen.—No person shall be licensed to catch oysters from the public grounds of the State who is owner, lessee, master, captain, mate or foreman, or who owns an interest in or who is an agent for any boat that is used or that may be used in dredging oysters from the public grounds of the State, who is not a bona fide resident of this State and who has not continuously resided therein for two years next preceding the date of his application for license, and no nonresident shall be employed as a laborer on any boat licensed to dredge oysters under this subchapter who has an interest in or who receives any profit from the oysters caught by any boat permitted to dredge oysters on the public grounds of the State. Any person, firm or corporation employing any nonresident laborer forbidden by this section, upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars. (1903, c. 516, s. 6; 1905, c. 525, s. 3; Rev., s. 2408; C. S., s. 1915.)

§ 113-189: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-190. Monthly report of licenses to be filed.—The Commissioner of Commercial Fisheries, assistant commissioner or inspector who are authorized

to issue license or to collect a license tax shall, on or before the fifteenth day of each month, mail to the Board a statement, showing all licenses issued during the preceding month, to whom issued and for what purpose, and the amount of tax collected by them from all sources under the oyster laws, and shall at the same time remit said amount direct to the State Treasurer. They shall at the same time mail to each inspector asking for the same a list of all persons to whom license has been issued and of all boats or vessels licensed, and for what purpose. (1903, c. 516, s. 4; 1905, c. 525, s. 6; Rev., s. 2412; C. S., s. 1918.)

§ 113-191. Certain shellfish beds real property for taxation, etc.—All grounds taken up or held under authority of chapter 119 of the Public Laws of 1887 or previous acts for the purpose of cultivating shellfish shall be subject to taxation as real estate, and shall be so considered in the settlement of the estates, of deceased or insolvent persons. (1887, c. 119, s. 9; Rev., s. 2380; C. S., s. 1919.)

§§ 113-192, 113-193: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-194. Oyster measure.—All oysters measured in the shell shall be measured in a circular tub with straight sides and straight, solid bottom, with holes in the bottom not more than one-half inch in diameter. The said measures shall have the following dimensions: A bushel tub shall measure eighteen inches from inside to inside across the top, sixteen inches from inside to inside chimb to the bottom and twenty-one inches diagonal from inside chimb to top. All measures found in the possession of any dealer not meeting the requirements of this section shall be destroyed by the Commissioner of Commercial Fisheries, assistant commissioner or inspector. (1903, c. 510, s. 12; Rev., s. 2417; 1907, c. 969, s. 10; Ex. Sess. 1913, c. 42, s. 2; C. S., s. 1922.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1923.

§ 113-195. Illegal measures prohibited.—If any person shall in buying or selling oysters use any measure other than that prescribed by law for the measurement of oysters, or if any dealer in oysters shall have in his possession any measure for measuring oysters other than that prescribed by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1903, c. 516, s. 12; Rev., s. 2399; C. S., s. 1924.)

§ 113-196: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-197. Illegal dredging prohibited; evidence.—If any person shall use any scoops, scrapes or dredges for catching oysters except at the times and in the places in this chapter expressly authorized, or shall between the fifth day of April and the fifteenth day of November of any year carry on any boat or vessel any scoops, scrapes, dredges or winders, such as are usually or can be used for taking oysters, he shall be guilty of a misdemeanor.

If any boat or vessel shall be seen sailing on any of the waters of this State during the season when the dredging of oysters is prohibited by law in the same manner in which they sail to take or catch oysters with scoops, scrapes or dredges, the said boat or vessel shall be pursued by any officer authorized to make arrests, and if said boat or vessel apprehended by said officer shall be found to have on board any wet oysters or the scoops, scrapes, dredges or lines, or deck wet, indicating the taking or catching of oysters at said time, and properly equipped for catching or taking oysters with scoops, scrapes, or dredges, such facts shall be prima facie evidence that said boat or vessel has been used in violation of the provisions of the law prohibiting the taking or catching of oysters with scoops, scrapes or dredges in prohibited territory or at a season when the taking or catching of oysters with scoops, scrapes or dredges is prohibited by law, as the case may be. (1903, c. 516, ss. 13, 14, 15, 28; Rev., ss. 2385, 2397; C. S., s. 1926.)

§§ 113-198, 113-199: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-200. **Taking uncultured oysters for planting permitted to residents.**—Residents of the State of North Carolina shall be permitted to take oysters without culling from natural rocks at any time during the year for planting purposes only, in the waters of North Carolina. (1917, c. 153; C. S., s. 1930.)

§ 113-201. **Uncultured oysters seized and scattered on public grounds.**—Whenever oysters are offered for sale or loaded upon any vessel, car or train, without having been properly culled according to law, the Commissioner of Commercial Fisheries, assistant commissioner, or inspector shall seize the boat, vessel, car or train containing the same and shall cause the said oysters to be scattered upon the public grounds, and the costs and expenses of said seizure and transportation shall be a prior lien to all liens on said boat, vessel, car or train, and if not paid on demand the officers making the seizure shall, after advertisement for twenty days, sell the same and make title to the purchaser, and after paying expenses as aforesaid pay the balance, if any, into the "Commercial Fisheries Experimental and Oyster Demonstration Fund." For the towing of said boat, a charge of three dollars and fifty cents per hour shall be charged against said boat for towage. (1903, c. 516, s. 3; Rev., s. 2416; 1907, c. 969, ss. 9, 13; C. S., s. 1931.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1931.

§ 113-202: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-203. **Perjury in application for oyster license.**—If any person shall make any false statement for the purpose of procuring any license, which may be required by law, to catch oysters, or to engage in the oyster industry, he shall be guilty of perjury and punished as provided by law. (1903, c. 516, s. 17; Rev., s. 2390; C. S., s. 1933.)

§ 113-204. **Catching oysters without license.**—If any person shall catch oysters from the public grounds of the State without having first obtained a license according to law, or shall employ any person as agent or assistant, or shall as the agent or assistant of any person catch oysters from the public grounds, without all of said persons having first obtained a license according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1903, c. 516, s. 6; Rev., s. 2386; C. S., s. 1934.)

§ 113-205. **Engaging in oyster dealing without license.**—If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds, or natural oyster beds of the State, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1903, c. 516, s. 9; Rev., s. 2395; 1915, c. 136, s. 1; C. S., s. 1935.)

This section was designed to render more effective the legislation in protection of the fish and oyster industries of the State. *State v. Sermons*, 169 N. C. 285, 84 S. E. 337 (1915).

Oysters Procured from Private Owners.—Prior to the repeal of § 113-192, forbidding any person to buy or sell oysters taken from public grounds or natural beds

during a closed season, etc., it was held that such section and this section could not be construed together with the effect that a license is not required when oysters are shown to have been procured from private owners there being no necessary or essential connection between the two. *State v. Sermons*, 169 N. C. 285, 84 S. E. 337 (1915).

§ 113-206. **Use of unlicensed boat in catching oysters.**—If any person shall use any boat or vessel in catching oysters, which boat has not been licensed according to law, and which is not in all respects complying with the law regulating the use of such vessels, he shall be guilty of a misdemeanor and shall

be fined not more than fifty dollars nor less than ten dollars or imprisoned not more than thirty nor less than ten days for the first offense, but for the second or subsequent offense he shall be guilty of a misdemeanor and punished at the discretion of the court. (1903, c. 516, s. 8; Rev., s. 2387; C. S., s. 1936.)

§ 113-207. Failure to stop and show license.—If any person using a boat or vessel for the purpose of catching oysters shall refuse to stop and exhibit his license when commanded to do so by the Commissioner of Commercial Fisheries, assistant commissioner or any inspector, he shall be guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than fifty dollars. (1903, c. 516, s. 26; Rev., s. 2389; C. S., s. 1937.)

§ 113-208. Displaying false number on boat.—If any person shall display any other number on the sail than the one specified in his license or display a number when the boat or vessel has not been licensed, he shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars. (1903, c. 516, s. 27; Rev., s. 2388; C. S., s. 1938.)

§ 113-209. Catching oysters for lime.—If any person shall take or catch any live oysters to be burned for lime or for any agricultural or mechanical purpose, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that shells may be taken which do not contain more than five per cent of live oysters. (Code, s. 3389; 1885, c. 182; Rev., s. 2400; 1907, c. 969, ss. 12, 13; C. S., s. 1939.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1939.

§ 113-210. Catching oysters Sunday or at night.—If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the State at night or on Sunday, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1903, c. 516, s. 16; Rev., s. 2384; C. S., s. 1940.)

Cross Reference. — As to prohibition against Sunday fishing, see § 113-247.

§ 113-211. Unloading at factory Sunday or at night.—If any person shall unload any oysters from any boat, vessel or car at any factory or house for shipping, shucking or canning oysters on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector. (1903, c. 516, s. 16; Rev., s. 2394; C. S., s. 1941.)

§ 113-212. Oyster-laden boats in canals regulated.—No boat or vessel loaded with oysters shall be permitted by the inspectors of South Mills and Coinjock to pass through the canals, which does not have a certificate showing that the cargo has been inspected and the tax paid thereon. (1903, c. 516, s. 17; Rev., s. 2420; C. S., s. 1942.)

§ 113-213. Sale or purchase of uncultured oysters.—If any person shall sell or offer for sale, transport or offer to transport out of the State, or from one point in the State to another, or have in his possession any oysters which have not been properly culled according to law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It is unlawful for any person, firm or corporation to purchase oysters which have not been properly culled according to law, and for each violation he shall upon con-

viction be fined two hundred dollars or be imprisoned in the discretion of the court. (1903, c. 516, s. 3; Rev., s. 2392; 1907, c. 969, ss. 5, 13; C. S., s. 1943.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1943.

§ 113-214. Boat captain's purchase of uncultured oysters.—The captain of any run or buy boat who shall purchase oysters which have not been properly culled according to law shall upon conviction be fined two hundred dollars or imprisoned in the discretion of the court, and the having of uncultured oysters aboard of his boat shall be prima facie evidence of his having purchased them. When any person, firm or corporation shall furnish the captain of any run or buy boat with funds with which to purchase oysters, they shall not be held responsible for his acts and shall not be deemed the purchaser of such oysters. (1907, c. 969, ss. 5, 13; C. S., s. 1944.)

Local Modification.—New Hanover, Onslow, Pender: C. S. 1944.

§ 113-215: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-216. Injury to private grounds; work at night.—If any person shall willfully commit any trespass or injury with any instrument or implement upon any ground upon which shellfish are being raised or cultivated, or shall remove, destroy or deface any mark or monument lawfully set up for the purpose of marking any grounds, or shall work on any oyster ground at night, he shall be guilty of a misdemeanor. But nothing in the provisions of this section shall be construed as authorizing interference with the capture of migratory fishes or free navigation or the right to use on any private grounds any method or implement for the taking, growing or cultivation of shellfish. (1887, c. 119, s. 11; Rev., s. 2402; C. S., s. 1946.)

ARTICLE 16A.

Development of Oyster and Other Bivalve Resources.

§ 113-216.1. Statement of purpose.—The purpose of this article is to authorize the Department of Conservation and Development, through the Division of Commercial Fisheries, to manage, restore, develop, cultivate, conserve, and rehabilitate the oyster, clam, scallop, and other bivalve resources in the waters of Eastern North Carolina by qualified, specialized personnel. (1947, c. 1000, s. 1.)

§ 113-216.2. Powers of Board of Conservation and Development; oyster rehabilitation program.—I. The Department of Conservation and Development shall conduct, through the Division of Commercial Fisheries, a large oyster rehabilitation program consisting of large-scale operations for the planting of shells and seed oysters on natural oyster beds and other areas found to be suitable for oyster growth or reproduction, and subject to budgetary provisions, may procure suitable and adequate boats, barges, and the other suitable materials, and for collecting and transplanting seed and adult oysters, and for the proper and adequate enforcement of the statutes and regulations adopted pursuant thereto for the protection of marine bivalve resources.

II. The Board of Conservation and Development is authorized and empowered to adopt rules and regulations to enforce the provisions of this article and to carry out its true purpose and intent, and in particular, dealing with and controlling the following subjects:

A. To limit the number of bushels of marketable oysters which may be taken from public beds in any one day and the number, weight, and size of dredges, but no one boat may take more than seventy-five (75) bushels in one day.

B. To close any or all portions of the public oyster beds when it is determined

that such action will be beneficial to the shellfish industry or for the protection and propagation of oysters or because of prevailing marketing conditions.

C. To levy licenses, taxes, and fees not in excess of the following:

1. A tax not exceeding eight cents (8c) per bushel on oysters.
2. An annual license of fifteen dollars (\$15.00) on each oyster dredge boat.
3. A license of twenty-five dollars (\$25.00) on each packer, shucker, and canner, and to require the contribution of not more than fifty per cent (50%) of their oyster shells accumulated annually for planting on public beds.

D. To require persons dredging oysters from public beds to obtain a license and to deny the issuance of licenses to nonresidents, or to boats owned by nonresidents, or on which a lien is held by a nonresident.

E. To regulate, control, or prohibit the importation of new species of mollusks such as the Pacific oyster, *Ostrea gigas*.

F. To regulate, control, or prohibit the shipment of oysters in the shell out of the State of North Carolina and the sale of the oysters in the shell for shipment out of the State. If the Board permits the sale of such oysters to nonresidents or for the purpose of shipment out of the State the purchasers shall pay a tax of fifty cents (50c) per bushel in addition to any other tax or fee levied. (1947, c. 1000, s. 2.)

§ 113-216.3. Appropriation for use by Division of Commercial Fisheries.—There is hereby appropriated out of the general fund of the State to the Department of Conservation and Development, for the use and benefit of the Division of Commercial Fisheries, the sum of one hundred thousand dollars (\$100,000.00) to serve as a revolving fund to carry out the provisions of this article; and any portions of said fund remaining unexpended at the end of any fiscal year shall be carried over into the next fiscal year until otherwise directed by the General Assembly of North Carolina. (1947, c. 1000, s. 3.)

§ 113-216.4. Use of proceeds from licenses, taxes and fees.—To make the program herein authorized self-supporting insofar as possible, all licenses, taxes, and fees imposed by this article or by other statutes applicable to shellfish shall be deposited with the State Treasurer to be used solely to effectuate the purposes and requirements of this article. (1947, c. 1000, s. 4.)

ARTICLE 17.

Experimental Oyster Farms.

§§ 113-217 to 113-219: Repealed by Session Laws 1951, c. 1045, s. 1.

ARTICLE 18.

Propagation of Oysters.

§ 113-220. Board to plant natural oyster beds; material; selection of planting ground.—The Board of Conservation and Development is authorized, empowered, and directed to make all necessary and proper arrangements and to take the necessary steps to provide for the planting in the natural oyster beds of the public waters of North Carolina all shells, "coon oysters," or "seed oysters," or such other material as is well adapted for the propagation of oysters. The said Board shall select such territory or planting ground in the public waters of North Carolina as is best adapted to the culture of oysters, and is most conveniently located with reference to existing beds or shells, "coon oysters," or "seed oysters," or other material well adapted for the propagation of oysters. (1921, c. 132, s. 1; C. S., s. 1959(a).)

§ 113-221. Location and boundaries of planting; propagating material; manner and time of planting; supervision of work.—The said

Board may designate the location and boundaries of said territory for such planting, and may further designate what oyster propagating materials shall be planted in said territory, the manner and time of said planting, and from what territory the said materials can be secured. The said Board shall carefully supervise or cause to be carefully supervised by its properly designated agents, the planting of such beds and the distribution of said oyster propagating materials in said territory or beds. (1921, c. 132, s. 2; C. S., s. 1959(b).)

§ 113-222. Purchase of material; pay for work; contracts; limit of cost.—The said Board may purchase the necessary shells, “coon oysters,” “seed oysters,” or other propagating materials, and may cause same to be distributed in a designated territory or territories, and the said Board may provide proper compensation for any work or labor connected with the procuring of said materials, or the planting or distributing of said materials; or the said Board may let out by private contract any part of the said procuring or distributing materials, or both: Provided, that the complete and entire cost of planting any of said propagating materials shall not exceed the sum of ten cents per bushel of said material so distributed, and the said Board may not make any contract which will result in making the cost of planting of any quantity of said material exceed ten cents per bushel. (1921, c. 132, s. 3; C. S., s. 1959(c).)

§ 113-223. Marking boundary of planted grounds; protection.—It shall be the duty of the said Board to plainly and clearly mark and define the limits and boundaries of any territory which may be planted with oyster propagating materials under the provisions of this article. The said Board may prohibit the taking of any oysters from any such territory or area for such length of time as the Board may determine, and the said Board may regulate the manner of such taking as the said Board may determine: Provided, that the said Board shall prohibit any taking oysters from any territory or area so planted for at least two years after such planting. (1921, c. 132, s. 5; C. S., s. 1959(e).)

§ 113-224. Acts violative of law constituting misdemeanor.—Any person violating any proper regulations or prohibitions of said Board may, under the authority of § 113-223, or any person who shall take oysters from any territory or area within two years after the planting of oyster propagating material in such territory or area under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1921, c. 132, s. 6; C. S., s. 1959(f).)

§ 113-225. Enforcement of law.—It shall be the duty of the said Board and its assistants to enforce the provisions of this article, and the regulations and prohibitions of said Board may, under the authority of this article, be enforced in the same manner as is provided for enforcing the fishing laws of this State, and the regulations of said Board adopted under the authority of said laws, and the said Board and its assistants shall have the same powers and duties and obligations with respect to the enforcement of this article as said Board and its assistants have with respect to other fishing laws of this State. (1921, c. 132, s. 7; C. S., s. 1959(g).)

§ 113-226. Planting of certain kinds of oysters prohibited.—It shall be unlawful for any person, persons, firm or corporation to plant, store, distribute or in any way deposit the Japanese, Portuguese or Mongolian oysters in any of the waters of North Carolina. Any person, persons, firm or corporation violating or attempting to violate this section shall be guilty of a felony, and, upon conviction, shall be fined not less than one thousand dollars (\$1,000.00) or imprisoned not less than one (1) year, or both, in the discretion of the court. (1933, c. 235.)

ARTICLE 19.

Terrapin.

§§ 113-227, 113-228: Repealed by Session Laws 1951, c. 1045, s. 1.

ARTICLE 20.

Salt Fish and Fish Scrap.

§ 113-229: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-230. **Salt fish sold by weight; marked on package.**—All salt fish packed for market shall be sold at their net weight, which shall be marked on every package; and any person packing or offering for sale salt fish, fraudulently marking the net weight on the package, shall for each offense be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, or both, at the discretion of the court. (1909, c. 663, s. 2; C. S., s. 1961.)

§ 113-231: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-232. **Measures for fish scrap and oil.**—For the purpose of uniformity in the trade of manufacturing fish scrap and oil in the State of North Carolina, there is hereby established a standard measure of twenty-two thousand cubic inches for every one thousand fish. Any person, firm, corporation or syndicate buying or selling menhaden fish for the purpose of manufacturing within the borders of this State, who shall measure the fish by any other standard (more or less) than is prescribed in this section, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. Each day said measure is unlawfully used shall constitute a separate and distinct offense. (1911, c. 101; C. S., s. 1963.)

ARTICLE 21.

Commercial Fin Fishing; General Regulations.

§ 113-233. **Right of fishing in grantee of land under water.**—Whenever any person acquires title to lands covered by navigable water under the subchapter Entries and Grants of the chapter entitled State Lands, the owner or person so acquiring title has the right to establish fisheries upon said lands; and whenever the owner of such lands improves the same by clearing off and cutting therefrom logs, roots, stumps or other obstructions, so that the said land may be used for the purpose of drawing or hauling nets or seines thereon for the purpose of taking or catching fish, the person who makes or causes to be made the said improvements, his heirs and assigns, shall have prior right to the use of the land so improved, in drawing, hauling, drifting or setting nets or seines thereon, and it shall be unlawful for any person, without the consent of such owner, to draw or haul nets or seines upon the land so improved by the owner thereof for the purpose of drawing or hauling nets or seines thereon. This section shall apply where the owner of such lands shall erect platforms or structures of any kind thereon to be used in fishing with nets and seines. Every person who shall willfully destroy or injure the said platforms or structures, or shall interfere with or molest the owner in the use of such lands as aforesaid, or in any other manner shall violate this section, shall be guilty of a misdemeanor. This section shall not relieve any person from punishment for the obstruction of navigation. (1874-5, c. 183, ss. 1-6; Code, s. 3384; Rev., s. 2460; C. S., s. 1964.)

Cross References.—As to lands covered by navigable waters not subject to entries for purpose of obtaining grants, see § 146-1. As to injuries to nets by boats, see § 113-249.

Exclusive Right to Fish Not Acquired.—

Where the owner of a beach has used the adjoining navigable waters to fish with a seine for many years but it was not contended that the owner had improved the land under the water by removing logs, roots, stumps, and other obstructions, no exclusive right to fish in the adjoining waters was acquired by user. Under Re-

visal § 1693 (now § 146-1) an express grant of the land covered by navigable water would have been void under the circumstances. *Bell v. Smith*, 171 N. C. 116, 87 S. E. 987 (1916).

The right of fishing is subordinate to the right of navigation in a navigable river. *Lewis v. Keeling*, 46 N. C. 299 (1854).

§§ 113-234 to 113-236: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-237. **Permission to set up apparatus to be granted by Department of Conservation and Development and federal government; license fee.**—Application for entry for the purpose of constructing permanent and semi-permanent, or stationary fishing apparatus within the three-mile limit under the provisions of this and the preceding section shall be made to the Department of Conservation and Development. Permits for the erection of such fishing apparatus, nets, wires or devices, may be granted by the Department of Conservation and Development if such construction is deemed not to be a menace to public safety or navigation. No construction, or any part of a construction, to be erected under the authority of this section shall be made until permission is secured from the Department of Conservation and Development and from the federal government. The license fee for the erection of fishing apparatus, nets, wires, or other construction which is an integral part of such fishing device, under the authority of this and the preceding section, shall be at the rate of twenty-five dollars per pocket per year, and said license shall expire each year on December thirty-one: Provided, however, the license fee herein levied shall not apply where the investment for such apparatus does not exceed the sum of one thousand dollars. (1931, c. 118, s. 2.)

§§ 113-238 to 113-243: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-244. **Poisoning streams.**—If any person shall put any poisonous substance for the purpose of catching, killing or driving off any fish in any of the waters of a creek or river, he shall be guilty of a misdemeanor. (1883, c. 290; Code, s. 1094; Rev., s. 3417; C. S., s. 1968.)

Protection of Riparian Owners.—Former § 113-287, relating to setting nets in Pamlico Sound, and this section were enacted, in part at least, for the protection of riparian owners and those similarly situated. *Hampton v. North Carolina Pulp Co.*, 223 N. C. 535, 27 S. E. (2d) 538 (1943).

In an action by plaintiff, a riparian proprietor on a navigable river, who was the owner of a long established fishery upon the shores of his property along such stream wherein it was alleged that plaintiff

had suffered damages by the interference of defendant in polluting the waters of the river with toxic chemicals and other matter deleterious to fish life, discharged into said river as waste from defendant's recently established pulp mill, causing a public nuisance and seriously interrupting the migratory passage of fish, it was held error to sustain a demurrer to the complaint as not stating a cause of action. *Hampton v. North Carolina Pulp Co.*, 223 N. C. 535, 27 S. E. (2d) 538 (1943).

§ 113-245. **Putting explosives in waters forbidden.**—No person, firm or corporation shall put or place in any waters within or on the boundaries of this State any electricity, explosives or poisonous substances whatsoever for the purpose of catching, injuring or killing fish. No person, firm or corporation shall allow substances, poisonous to fish to be turned into or allowed to run, flow, wash or be emptied into any waters within this Commonwealth, designated by the Board as fish producing waters, unless it be shown to the satisfaction of the Board or to the proper court that every reasonable and practicable means has been used to abate and prevent the pollution of waters in question by emptying into same any deleterious or poisonous substances: Provided this section shall not apply to dyestuffs or sewage discharged from cotton mills.

In prosecutions under this section for pollution of water by substances known

to be injurious to fish or fish food, it shall not be necessary to prove that such substances have actually caused the death of any particular fish.

No person shall fish or trespass with intent to fish in or upon any waters or bed or banks of any water, or any land controlled or owned, or occupied by the Board. No person shall willfully or maliciously destroy or damage any ponds, property or appliance whatsoever of the Board, nor interfere, obstruct, pollute or diminish the natural flow of water into or through any State fish hatchery.

Any person violating any of the provisions of this section shall, on conviction, be fined not less than one hundred dollars for each and every offense: Provided, further, that this section shall apply only to such fish producing streams designated as such by the Board, and that no prosecution under this section shall be instituted except by said Board. (1927, c. 107.)

§ 113-246. Fish offal in navigable waters.—If any person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the State, any fish offal, in any quantity that shall be likely to hinder or prevent the passage of fish along such channel, or if any person shall throw or cause to be thrown into the waters known as the Frying Pan, tributary to the Great Alligator River, in Tyrrell County, any fish offal in any quantities whatsoever, he shall be guilty of a misdemeanor. (Code, ss. 3386, 3389, 3407; Rev., s. 2444; C. S., s. 1969.)

§ 113-247. Sunday fishing.—If any person fish on Sunday with a seine, drag-net or other kind of net, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars or imprisoned not more than twelve months; provided, however, that the provisions of this section shall apply only to inland waters under the jurisdiction of the Wildlife Resources Commission, and shall not apply to any waters classified as commercial fishing waters. (1883, c. 338; Code, s. 1116; Rev., s. 3841; C. S., s. 1970; 1933, c. 438; 1951, c. 1045, s. 1.)

Cross Reference.—As to provisions concerning catching and unloading oysters on Sunday or at night, see §§ 113-210, 113-211.

Editor's Note. — The 1951 amendment added the proviso.

§ 113-248. Robbing nets.—If any person shall, without authority of the owner, take any fish from any nets of any kind, he shall be guilty of a misdemeanor. (1883, c. 137, s. 5; Code, s. 3418; Rev., s. 2478; C. S., s. 1971.)

§ 113-249. Vessel injuring nets.—If any master or other person having the management or control of a vessel or boat of any kind, in the navigable waters of the State, shall willfully, wantonly, and unnecessarily do injury to any seine or net which may be lawfully hauled, set or fixed in said waters for the purpose of taking fish, he shall forfeit and pay to the owner of such seine or net, or other person injured by such act, one hundred dollars, and shall be guilty of a misdemeanor. (Code, ss. 3385, 3389; Rev., s. 2465; C. S., s. 1972.)

The right of navigation is paramount but not exclusive. If nets are across the channel of a river, or are in any other way a bar to navigation, they may be run over with impunity by any vessels that may find it reasonably necessary to do so. *Lewis v. Keeling*, 46 N. C. 299, 62 Am. Dec. 188 (1854); *State v. Baum*, 128 N. C.

600, 38 S. E. 900 (1901). But there must be some such necessity. There must be no wantonness or malice, no unnecessary damage, but a bona fide exercise of the paramount right of navigation. *Hopkins v. Norfolk, etc., R. Co.*, 131 N. C. 463, 42 S. E. 902 (1902).

§ 113-250. Injury to fishing structures.—If any person shall willfully destroy or injure any platform or structure on any land covered by navigable waters, which land has been duly entered and granted and over which the owner has, according to law, acquired a prior right of fishery, or shall interfere with or molest the owner in the use thereof or of said prior right of fishery, he shall be

guilty of a misdemeanor. If any person shall willfully destroy or injure any platform or structure erected in any navigable waters by the owner of the adjoining land for the purpose of drawing or hauling nets or seines thereon, or shall interfere with or molest the owner in the use of any such lands, he shall be guilty of a misdemeanor. (1874-5, c. 183, ss. 2-4; Code, s. 2753; Rev., ss. 3414, 3415; C. S., s. 1973.)

§ 113-251. **Obstructing passage of fish in streams.**— If any person shall set a net of any description across the main channel of any river or creek, or shall erect, so as to extend more than three-fourths of the distance across any such river or creek, any stand, dam, weir, hedge or other obstruction to the passage of fish, or shall erect any stand, dam, weir, or hedge, in any part of any river or creek that may be left open for the passage of fish, or who, having erected any dam where the same was allowed, shall not make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish, he shall be guilty of a misdemeanor: Provided, however, that the provisions of this section shall apply only to inland waters under the jurisdiction of the Wildlife Resources Commission, and shall not apply to any waters classified as commercial fishing waters. (Code, ss. 3387, 3388, 3389; Rev., s. 2457; 1909, c. 466, s. 1; C. S., s. 1974; 1951, c. 1045, s. 1.)

Editor's Note. — The 1951 amendment added the proviso.

§ 113-252. **Dams for mills and factories regulated; sluiceways.**— No person shall place or allow to remain any dam for mill or factory purposes in the Chowan River between Holliday's Island and the Virginia line; in the Meherrin River between its mouth and the Virginia line; in the Roanoke River from the mouth of the Cashie River to the Virginia line; in the Dan River from the crossing of the State line to a point nearest Danbury; in the Neuse River from New Bern to Neuse station in Wake County; in Contentnea Creek from its junction with the Neuse to the junction of Turkey and Moccasin creeks; in the Cape Fear River from Wilmington to the junction of Haw and Deep rivers and thence in Haw River to the line of Chatham and Alamance counties, and also in Deep River to the Randolph and Chatham line; in Rocky River from its mouth to the crossing of the Pittsboro and Ashboro road; in the New Hope River from its mouth to the Orange County line; in Northeast Cape Fear River from Wilmington to South Washington; in Black River from its mouth to the junction of the Coharie; in the South River from its junction with the Black River to the crossing of the Fayetteville and Warsaw public road; in Lumber River from the State line to the northern boundary of Robeson County; in the Yadkin River from the State line to Patterson's factory; in Elk Creek, a tributary of the Yadkin River, from its mouth to Daniel Wheeler's in Watauga County; in Stony Fork Creek, a tributary of the Yadkin River, from its mouth to John Jones's old store; in Ararat River from its mouth to the bridge at Mount Airy; in North Fork of Catawba from its mouth to Turkey Cove; in Broad River from the State line to Reedy Patch Creek; in Green River from its mouth to its junction with North Pacolet; in the Tennessee River from the State line to its junction with the Nantahala; in Pigeon River from the State line to the Forks of Pigeon; in the French Broad River from the State line to Brevard and in the Swannanoa River; in Toe River from the State line to the confluence of the North and South Forks of Toe; in New River from the State line to the point of divergence from the western boundary line of Alleghany County; in Little River in Johnston County from its junction with Neuse River in Wayne County to the Wake County line; in Cane River from the mouth of same to mouth of Bolling Creek in Yancey County, also Old Fields of Toe on North Toe River in Mitchell County; Johns River from its mouth to the forks of said river near Carrell Moore's in Caldwell county; Catawba River from the South Carolina line to the town of Old Fort in McDowell County, unless the owner thereof shall construct thereon at his own

expense a sluiceway for the free passage of fish, of a width not less than three feet nor more than ten feet: Provided, such sluiceway shall be constructed according to plans and specifications to be furnished by the Board of Agriculture, and shall not injure the water power of such owner: Provided further, in order to ascertain whether sluiceways will or will not injure the water power aforesaid, the owner of such dam may select two disinterested persons and the Board of Agriculture two others, who may select the fifth person to aid in the arbitration and settlement of such complaint: Provided further, this section shall not apply to Pigeon River in Haywood County: Provided also, it shall be lawful for any person to remove any obstruction in the main channel of the Cape Fear River to the width of one hundred feet, for the free passage of fish in the county of Harnett. This proviso, however, shall not apply to any dam or obstruction placed or kept upon said river by the Cape Fear iron and steel company. (1880, c. 34; 1881, cc. 21, 32, 250, 320; Code, s. 3410; 1901, c. 208; 1905, c. 278; Rev., s. 2462; P. L. 1913, c. 758; C. S., s. 1975.)

Cited, in regard to obstructions in fish Carolina Timber, etc., Co., 111 N. C. French Broad River, in *Gwaltney v. Scott*—550, 16 S. E. 692 (1892).

§ 113-253. Sluiceways and fish passages; regulation and enforcement.—The sluiceways referred to in the preceding section shall be so constructed and placed upon such dams by the owner thereof within sixty days after notice has been given by the Board of Agriculture, under a penalty of one hundred dollars per day for each day thereafter that such dam shall remain without such sluiceway, and shall be kept open by him during the months of February, March, April, May, June, October and November, and at all other times when there is sufficient water to supply both the water power and the sluiceway, a fine of fifty dollars per day for each day said sluiceway shall be allowed to remain closed, and any person who shall fish with net, trap, hook and line, or who shall take in any way whatsoever any fish within two hundred feet of said sluiceway, shall be subject to a fine of one dollar for each fish so taken, or a fine of fifty dollars for each offense, or imprisonment for thirty days.

No other obstruction to the passage of fish shall exist or be built between the designated points in the streams mentioned in this and the preceding section unless an opening of not less than twenty-five feet, and not more than seventy-five feet, embracing the main channel of said streams, shall be made by the owner of such obstructions within twenty days after notice from the Board of Agriculture to make such opening under penalty of fifty dollars per day for each day such obstruction shall remain unopened. Said notice shall be served by the sheriff of the county, and his return shall be prima facie evidence of notice in any suit for such penalty. (1880, c. 34, ss. 2, 3; Code, ss. 3411, 3412; Rev., ss. 2463, 2464; C. S., s. 1976.)

ARTICLE 22.

Co-Operation with United States Bureau of Fisheries.

§ 113-254. Fish cultural operations by United States.—The United States Fish and Wild Life Service is hereby granted the right to conduct fish cultural operations and scientific investigations in the several waters of North Carolina and to erect such fish hatcheries and fish propagating plants as are duly authorized by the Congress of the United States at such times as may be considered necessary and proper by said Commissioner and his agents, any laws of the State to the contrary notwithstanding. (1931, c. 268.)

ARTICLE 23.

Propagation of Fish.

§ 113-255. License for propagation; by whom issued.—The Depart-

ment of Conservation and Development is authorized to issue an artificial propagation license for the propagation of all species of trout and all species of bass, upon written application therefor signed by the applicant and upon the payment to said Department the sum of five dollars; for all other species of fish, the sum of fifty cents: Provided, that any commercial fisherman who has paid the required license or licenses upon his fishing nets, devices or gear shall not be required to pay an additional license to deal in live fish for propagation purposes. (1929, c. 198, s. 1; 1933, c. 430, s. 1.)

Editor's Note. — The 1933 amendment added the proviso.

§ 113-256. **Applications; when licenses expire.**—Applications shall be made on blanks prepared by the Department of Conservation and Development and shall show the size, character and purpose of the propagation plant and such other matters as the Department may require. All licenses issued under this article shall expire on the first day of January next following the date of issue. (1929, c. 198, s. 2.)

§ 113-257. **Erection of dams, ponds, etc.**—No dams, ponds, or other devices which will prevent the free migration of fish shall be erected or placed by a person licensed under this article, in any stream, flowing over his property. No person shall use the ponds so licensed for any purpose other than for commercial fish purposes. (1929, c. 198, s. 3.)

§ 113-258. **What license authorizes.**—The license issued under this article authorizes the licensee to carry on the business of propagation and sale of the species of fish authorized by the license, or the eggs thereof, during the year for which the license is issued. The license authorizes the licensee to catch and kill the fish authorized by the license from the licensed ponds in any manner whatsoever except with explosives or poisonous substances. The license further authorizes the licensee to sell or dispose of in any manner whatsoever the fish authorized by the license, or the eggs thereof, at any time of the year, and it authorizes express and railroad companies to receive and transport same. (1929, c. 198, s. 4.)

§ 113-259. **Catching fish from streams.**—The license issued under this article does not authorize the catching of fish out of any streams flowing over the property of the licensee. (1929, c. 198, s. 5.)

§ 113-260. **Certificate or invoice of sale.**—A person selling fish under the license provided by this article shall furnish the purchaser with a certificate or invoice of the sale, bearing the date of sale, the number of the license under which sold, the number of fish, and number of pounds sold. The certificate or invoice must be shown by the holder on demand of any fish or game protector or any other person authorized to enforce the fishing laws. The certificate or invoice shall authorize the sale of the fish so purchased for a period of six days after its date of issue. (1929, c. 198, s. 6.)

§ 113-261. **Annual reports of transactions.**—A person holding an artificial propagation license under this article shall annually on the first day of January file with the Department of Conservation and Development a written statement duly sworn to, showing the number, value, and number of pounds of fish or the eggs thereof sold or disposed of during the year. The books and property of the person licensed under this article shall be open to the Department or its agents for inspection at all reasonable times. (1929, c. 198, s. 7.)

§ 113-262. **From what waters stock taken.**—No person licensed under this article shall in any manner stock or maintain his establishments with any species of fish or eggs thereof taken from any waters within this State not owned, occupied or controlled by them. This section does not prohibit the ex-

change of fish eggs or the fry of any species of fish with the Department of Conservation and Development. (1929, c. 198, s. 8.)

§ 113-263. **Killing domestic and predatory birds and animals.**—A license issued under this article authorizes the licensee or his agent to kill, after five days' notice to their owner if known, any domestic bird or fowl trespassing on the waters or lands controlled, used, or occupied entirely for the artificial propagation of fish. Such license also authorizes the licensee or his agent to kill any wild birds or wild animals destructive to fish life whenever found on such waters or lands. (1929, c. 198, s. 9.)

§ 113-264. **Necessity for license; trespassing upon licensees' property.**—No person shall artificially propagate any species of fish without first procuring the license provided by this article. No person receiving a license, as provided by this article, shall operate a propagating plant different from that designated in the license. No person operating a propagating plant for which a license has been issued for the operation of such a plant shall catch fish out of any stream flowing over the property of the licensee. No person shall fish or trespass with intent to fish in or upon any waters, or ponds or banks of any waters, or any banks owned, controlled or occupied by persons licensed by this article. No person shall willfully or maliciously destroy or damage any ponds, property, or appliances whatever of a propagating plant licensed under this article. No person shall interfere or obstruct, pollute or diminish the natural flow of water into or through a propagation plant licensed under this article. (1929, c. 198, s. 10.)

§ 113-265. **Punishment for violation.**—Any person violating any provisions of this article shall on conviction be sentenced to pay a fine of not less than one hundred dollars or imprisoned in the discretion of the court. (1929, c. 198, s. 11.)

ARTICLE 24.

Shellfish; Local Laws.

§§ 113-266 to 113-269: Repealed by Session Laws 1951, c. 1045, s. 1.

§ 113-269.1. **Brunswick: Oyster and clam beds.**—The director of the Department of Conservation and Development is hereby directed to make a survey of the waters and sounds of Brunswick County, and to select and lay out oyster and clam beds in waters found suitable for that purpose, and to plant therein shells or seed oysters and clams, and shall plainly and clearly mark and define the limits and boundaries of each such oyster or clam bed so planted.

Any such oyster or clam beds so selected and planted under the provisions of this section shall be closed to the taking of oysters and clams for a period of three (3) years from the date of planting, and any persons taking oysters or clams from such beds within a period of three (3) years from the date of planting shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment or both, in the discretion of the court. (1951, c. 607.)

§§ 113-270 to 113-275: Repealed by Session Laws 1951, c. 1045, s. 1.

ARTICLE 25.

Commercial Fin Fishing; Local Regulations.

§§ 113-276 to 113-350: Repealed by Session Laws 1951, c. 1045, s. 1.

Editor's Note.—Many of the above repealed sections, namely, §§ 113-291 through 113-295, 113-297, 113-299, 113-303, 113-304, 113-323, 113-326, 113-331, 113-332, 113-345, and 113-346, were formerly repealed by Session Laws 1945, c. 1013.

§ 113-351. **Dare: Dutch and pound nets prohibited.**—It is unlawful for any person, firm or corporation to set any dutch or pound net within the space or area of water bounded and described as follows: Beginning at Hollowell's Wharf, at Nag's Head, and running thence a due west course to the channel in Roanoke Sound; thence northwest to the Currituck County line; thence with said Currituck County line to the shore.

Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined fifty dollars or imprisoned thirty days in the discretion of the court. (1913, c. 113; C. S., s. 2052.)

§§ 113-352 to 113-377: Repealed by Session Laws 1951, c. 1045, s. 1.

Editor's Note. — Many of the above 113-374 and 113-376, were formerly repealed sections, namely, §§ 113-352 repealed by Session Laws 1945, c. 1013. through 113-354, 113-361, 113-372 through

ARTICLE 26.

Marine Fisheries Compact and Commission.

§ 113-377.1. **Atlantic States Marine Fisheries Compact and Commission.**—The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any one or more of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida and with such other states as may enter into the Compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this Compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this Compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, North Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. The Board of the North Carolina Department of Conservation and Development shall designate either the director of the Department, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries as one member of the Commission, and the Commission on Interstate Co-operation of the State shall designate a member of the North Carolina legis-

lature as one of the members of said Commission, and the third member of said Commission, who shall be a citizen of the State having a knowledge of and interest in marine fisheries, shall be appointed by the Governor. This Commission shall be a body corporate, with the powers and duties set forth herein.

Article IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the co-ordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this Compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the co-ordinating agency for such stocking.

Article V

The Commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this Compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

Article VII

The Fish and Wildlife Service of the Department of the interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, co-operating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission

deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in Article II of this Compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this Compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recently published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars (\$200.00) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars (\$100.00).

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions

Maine	\$ 700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

Article XII

This Compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this Compact must be preceded by sending six months' notice in writing of intention to withdraw from the Compact to the other states party hereto. (1949, c. 1086, s. 1.)

§ 113-377.2. Amendment to Compact to establish joint regulation of specific fisheries.—The Governor is authorized to execute on behalf of the State of North Carolina an amendment to the Compact set out in § 113-377.1 with any one or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida or such other states as may become party to that Compact for the purpose of permitting the states that ratify this amendment to establish joint regulation of specific fisheries common to those states through the Atlantic States Marine Fisheries Commission and their representatives on that body. Notice of intention to withdraw from this amendment shall be executed and transmitted by the Governor and shall be in accordance with Article XII of the Atlantic States Marine Fisheries Compact and shall be effective as to this State with those states which similarly ratify this amendment. This amendment shall take effect as to this State with respect to such other of the aforesaid states as take similar action.

AMENDMENT NO. 1 OF THE ATLANTIC STATES MARINE FISHERIES COMPACT

The states consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted, provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general Compact. (1949, c. 1086, s. 2.)

§ 113-377.3. North Carolina members of Commission.—In pursuance of Article III of said Compact there shall be three members (hereinafter called commissioners) of the Atlantic States Marine Fisheries Commission (hereinafter called commission) from the State of North Carolina. The first commissioner from the State of North Carolina shall be either the director of the Department of Conservation and Development, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries of the State of North Carolina ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office and his successor as commissioner shall be his successor as either the Director of the Department of Conservation and Development, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries, as the case may be. The second commissioner from the State of North Carolina shall be a legislator and member of the Commission on Interstate Co-operation of the State of North Carolina, ex officio, designated by said Commission on Interstate Co-operation, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office or said office as Commissioner on Interstate Co-operation, and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said Commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such Commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term. The Director of the Department of Conservation and Development, the chairman of the committee on commercial fisheries,

or the Commissioner of Commercial Fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the Commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said Compact shall then have gone into effect in accordance with Article II of the Compact; otherwise they shall begin upon the date upon which said Compact shall become effective in accordance with said Article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing. (1949, c. 1086, s. 3.)

§ 113-377.4. Powers of Commission and commissioners.—There is hereby granted to the Commission and the commissioners thereof all the powers provided for in the said Compact and all the powers necessary or incidental to the carrying out of said Compact in every particular. All officers of the State of North Carolina are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said Compact in every particular; it being hereby declared to be the policy of the State of North Carolina to perform and carry out the said Compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the State government or administration of the State of North Carolina are hereby authorized and directed at convenient times and upon request of the said Commission to furnish the said Commission with information and data possessed by them or any of them and to aid said Commission by loan of personnel or other means lying within their legal rights respectively. (1949, c. 1086, s. 4.)

§ 113-377.5. Powers herein granted to Commission are supplemental.—Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said Commission by other laws of the State of North Carolina or by the laws of the states of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia and Florida or by the Congress or the terms of said Compact. (1949, c. 1086, s. 5.)

§ 113-377.6. Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Comptroller.—The Commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of the State of North Carolina on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of North Carolina which may be necessary to carry out the intent and purposes of the Compact between the signatory states.

The Comptroller of the State of North Carolina is hereby authorized and empowered from time to time to examine the accounts and books of the Commission, including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor of such State. (1949, c. 1086, s. 6.)

§ 113-377.7. Appropriation by State; disbursement.—The sum of six hundred dollars (\$600.00), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, for the expenses of the Commission created by the Compact authorized by this article. The moneys hereby appropriated shall be paid out of the State treasury

on the audit and warrant of the Comptroller upon vouchers certified by the chairman of the Commission in the manner prescribed by law. (1949, c. 1086, s. 7.)

SUBCHAPTER IVA. REPEALS.

ARTICLE 26A.

Repeal of Acts.

§ 113-377.8. Repeal of certain public, public-local, special and private acts.—The following public, public-local, special and private acts are hereby repealed: Chapter 36 of the Public Laws of 1901; chapter 113 of the Public Laws of 1901; chapter 260 of the Public Laws of 1901; chapter 308 of the Public Laws of 1901; chapter 326 of the Public Laws of 1901; chapter 370 of the Public Laws of 1901; chapter 431 of the Public Laws of 1901; chapter 435 of the Public Laws of 1901; chapter 475 of the Public Laws of 1901; chapter 589 of the Public Laws of 1901; chapter 673 of the Public Laws of 1901; chapter 702 of the Public Laws of 1901; chapter 771 of the Public Laws of 1901; chapter 131 of the Public Laws of 1903; chapter 414 of the Public Laws of 1903; chapter 520 of the Public Laws of 1903; chapter 631 of the Public Laws of 1903; chapter 650 of the Public Laws of 1903; chapter 658 of the Public Laws of 1903; chapter 668 of the Public Laws of 1903; chapter 732 of the Public Laws of 1903; chapter 752 of the Public Laws of 1903; chapter 86 of the Public Laws of 1905; chapter 265 of the Public Laws of 1905; chapter 283 of the Public Laws of 1905; chapter 351 of the Public Laws of 1905; chapter 363 of the Public Laws of 1905; chapter 500 of the Public Laws of 1905; chapter 560 of the Public Laws of 1905; chapter 386 of the Public Laws of 1907; chapter 572 of the Public Laws of 1907; chapter 690 of the Public Laws of 1907; chapter 811 of the Public Laws of 1907; chapter 977 of the Public Laws of 1907; chapter 426 of the Public Laws of 1909; chapter 466 of the Public Laws of 1909; chapter 585 of the Public Laws of 1909; chapter 755 of the Public Laws of 1909; chapter 871 of the Public Laws of 1909; chapter 525 of the Public-Local Laws of 1911; chapter 547 of the Public-Local Laws of 1911; chapter 572 of the Public-Local Laws of 1913; chapter 587 of the Public-Local Laws of 1913; chapter 402 of the Private Laws of 1913; chapter 58 of the Public-Local Laws, Extra Session of 1913; chapter 211 of the Public-Local Laws, Extra Session of 1913; chapter 30 of the Public Laws of 1915; chapter 180 of the Public Laws of 1915; chapter 610 of the Public-Local Laws of 1915; chapter 599 of the Public-Local Laws of 1917; chapter 202 of the Public-Local Laws, Extra Session 1920; chapter 114 of the Public-Local Laws of 1921; chapter 384 of the Public-Local Laws of 1921; chapter 432 of the Public-Local Laws of 1921; chapter 439 of the Public-Local Laws of 1921; chapter 157 of the Public-Local Laws, Extra Session of 1921; chapter 130 of the Public-Local Laws of 1923; chapter 352 of the Public-Local Laws of 1923; chapter 533 of the Public-Local Laws of 1923; chapter 548 of the Public-Local Laws of 1923; chapter 461 of the Public-Local Laws of 1925; chapter 623 of the Public-Local Laws of 1925; chapter 228 of the Public-Local Laws of 1927; chapter 208 of the Public-Local Laws of 1929; chapter 42 of the Public Laws of 1933; chapter 51 of the Public Laws of 1933; chapter 241 of the Public-Local Laws of 1933; chapter 575 of the Public-Local Laws of 1933; chapter 365 of the Public-Local Laws of 1935; chapter 368 of the Public-Local Laws of 1935; chapter 509 of the Public-Local Laws of 1935; chapter 513 of the Public-Local Laws of 1935; chapter 352 of the Public Laws of 1937; chapter 266 of the Public-Local Laws of 1937; chapter 632 of the Public-Local Laws of 1937; chapter 265 of the Public Laws of 1939; chapter 138 of the Public-Local Laws of 1939; chapter 179 of the Public-Local Laws of 1939; chapter 335 of the Public-Local Laws of 1941; chapter 221 of the Special Laws of 1947; chapter 485 of the Special Laws of 1947; chapter 1017 of the Special Laws of 1947; chapter 1031 of the Special Laws of 1949.

Provided that any public, public-local, special or private law herein repealed may be covered by a regulation of the Board of Conservation and Development to effectuate the same privileges or protection therein provided upon the petition of either the representative or senator from that county or district filed within six (6) months from the date of ratification. (1951, c. 1045, s. 2.)

Editor's Note. — The act inserting this section was ratified on April 14, 1951. three lines of the first paragraph were apparently intended to read "Session Laws."

The words "Special Laws" in the last

SUBCHAPTER V. OIL AND GAS CONSERVATION.

ARTICLE 27.

Oil and Gas Conservation.

Part 1. General Provisions.

§ 113-378. Persons drilling for oil or gas to register and furnish bond.—Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Conservation and Development or such other State agency as may hereafter be established to control the conservation of oil or gas in this State. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid Department of Conservation and Development a bond in the amount of two thousand five hundred dollars (\$2,500.00) running to the State of North Carolina, conditioned that any well opened by the drilling operator upon abandonment shall be plugged in accordance with the rules and regulations of said Department of Conservation and Development. (1945, c. 765, s. 2.)

§ 113-379. Filing log of drilling and development of each well.—Upon the completion or shutting down of any abandoned well, the drilling operator shall file with the Department of Conservation and Development or other State agency, or with any division thereof hereinafter created for the regulation of drilling for oil or natural gas, a complete log of the drilling and development of each well. (1945, c. 765, s. 3.)

§ 113-380. Violation a misdemeanor.—Any person, firm or officer of a corporation violating any of the provisions of §§ 113-378 or 113-379 shall upon conviction thereof be guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000.00) and may in the discretion of the court be imprisoned for not more than two years. (1945, c. 765, s. 4.)

Part 2. Provisions Dependent upon Action of Governor.

§ 113-381. Title.—This law shall be designated and known as the Oil and Gas Conservation Act. (1945, c. 702, s. 1.)

Editor's Note.—As to discussion of this Act, see 23 N. C. Law Rev. 332.

§ 113-382. Declaration of policy.—If and when there should be discovered natural oil and/or natural gas within this State as a result of prospecting therefor by the drilling of wells, and where the discovery thereof in commercial quantities has been called to the attention of the Governor and Council of State, the Governor shall thereupon, with the advice of the Council of State, proclaim and declare this law to be in full force and effect, and shall proceed with the necessary action to see that the provisions of this law are carried out.

The General Assembly, in recognition of imminent evils that can occur in the production and use and waste thereof in the absence of coequal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production. (1945, c. 702, s. 2.)

§ 113-383. Petroleum Division created; members; terms of office; compensation and expenses.—Subject to the provisions of § 113-382, there is hereby established in the Department of Conservation and Development a division thereof to be known as the "Petroleum Division," hereinafter in this law called "the Division," which Division shall be composed of the Director of the Department of Conservation and Development and the State Geologist as ex officio members thereof, and three members of the Board of Conservation and Development, to be designated by the Governor, the members so designated to serve on said Division for a term of two years, or until their successors are designated. The successors of said members of said Division shall be designated biennially by the Governor. Any vacancies of said Division may be filled by the Governor. The said Division shall designate one of its members, or such other person as it may select, to act as secretary thereof, unless a director of production and conservation is appointed as hereinafter provided. The members of the aforesaid Petroleum Division, other than the ex officio members thereof, shall receive the same per diem compensation for attending meetings thereof, and shall be allowed the same expenses, as are allowed to members of the Board of Conservation and Development at meetings thereof. (1945, c. 702, s. 3.)

§ 113-384. Quorum.—A majority of said Division shall constitute a quorum, and three affirmative votes shall be necessary for adoption or promulgation of any rules, regulations or orders. (1945, c. 702, s. 4.)

§ 113-385. Power to administer oaths.—Any member of the Division, or the secretary thereof, shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by this law or by any other law of this State relating to the conservation of oil or gas. (1945, c. 702, s. 5.)

§ 113-386. Director of production and conservation and other employees; duties of secretary; Attorney General to furnish legal services.—The Division may with the approval of the Governor appoint one director of production and conservation at a salary to be fixed by the Governor, and such other assistants, petroleum and natural gas engineers, bookkeepers, auditors, gaugers and stenographers, and other employees as may be necessary properly to administer and enforce the provisions of this law.

The director of production and conservation, when appointed, shall be ex officio secretary of the Division, and shall keep all minutes and records of said Division and, in addition thereto, shall collect and remit to the State Treasurer all moneys collected. He shall, as such secretary, give bond in such sum as the Division may direct with corporate surety to be approved by the Division, conditioned that he will well and truly account for all funds coming into his hands as such secretary.

The Attorney General shall furnish the required legal services and shall be given such additional assistants as he may deem to be necessary therefor. (1945, c. 702, s. 6.)

§ 113-387. Production of crude oil and gas regulated; tax assessments.—All common sources of supply of crude oil discovered after January first, one thousand nine hundred and forty-five, if so found necessary by the Division, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this law, and the Division is hereby authorized to assess from time to time against each barrel of oil produced and saved a tax not to exceed

five (5) mills on each barrel. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

All common sources of supply of natural gas discovered after January first, one thousand nine hundred and forty-five, if so found necessary by the Division, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this law, and the Division is hereby authorized to assess from time to time against each thousand cubic feet of gas produced and saved from a gas well a tax not to exceed one half ($\frac{1}{2}$) mill on each one thousand cubic feet of gas. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law. (1945, c. 702, s. 7.)

§ 113-388. Collection of assessments.—Any person purchasing oil or gas in this State at the well, under any contract or agreement requiring payment for such production to the respective owners thereof, in respect of which production any sums assessed under the provisions of § 113-387 are payable to the Division, is hereby authorized, empowered and required to deduct from any sums so payable to any such person the amount due the Division by virtue of any such assessment and remit that sum to the Division.

Further, any person taking oil or gas from any well in this State for use or resale, in respect of which production any sums assessed under the provisions of § 113-387 are payable to the Division, shall remit any sums so due to the Division in accordance with those rules and regulations of the Division which may be adopted in regard thereto. (1945, c. 702, s. 8.)

§ 113-389. Definitions.—Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(A) "Division" shall mean the "Petroleum Division," as created by this law.

(B) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.

(C) "Oil" shall mean crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(D) "Gas" shall mean all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subsection (C) above.

(E) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure which is completely separated from the other zone in the structure is covered by the term "pool" as used herein.

(F) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(G) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.

(H) "Producer" shall mean the owner of a well or wells capable of producing oil or gas, or both.

(I) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include:

(1) The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing inefficiently the quantity of oil or gas ultimately to be recovered from any pool in this State.

(2) The inefficient storing of oil, and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(3) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land.

(4) Producing oil or gas in such manner as to cause unnecessary water channeling or coning.

(5) The operation of any oil well or wells with an inefficient gas-oil ratio.

(6) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(7) Underground waste however caused and whether or not defined.

(8) The creation of unnecessary fire hazards.

(9) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(10) Permitting gas produced from a gas well to escape into the air.

(J) "Product" means any commodity made from oil or gas and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether hereinabove enumerated or not.

(K) "Illegal oil" shall mean oil which has been produced within the State of North Carolina from any well during any time that that well has produced in excess of the amount allowed by rule, regulation or order of the Division, as distinguished from oil produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal oil."

(L) "Illegal gas" shall mean gas which has been produced within the State of North Carolina from any well during any time that that well has produced in excess of the amount allowed by any rule, regulation or order of the Division, as distinguished from gas produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal gas."

(M) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(N) "Tender" shall mean a permit or certificate of clearance for the transportation of oil, gas or products, approved and issued or registered under the authority of the Division. (1945, c. 702, s. 9.)

§ 113-390. Waste prohibited.—Waste of oil or gas as defined in this law is hereby prohibited. (1945, c. 702, s. 10.)

§ 113-391. Jurisdiction and authority of Petroleum Division; rules, regulations and orders.—The Division shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

The Division shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Division shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold

hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

The Division shall have authority to make, after hearing and notice as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules, regulations or orders for the following purposes:

A. To require the drilling, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.

B. To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.

C. To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

D. To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

E. To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

F. To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

G. To prevent fires.

H. To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

I. To regulate the "shooting," perforating, and chemical treatment of wells.

J. To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

K. To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

L. To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

M. To regulate the spacing of wells and to establish drilling units.

N. To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

O. To prevent where necessary the use of gas for the manufacture of carbon black. (1945, c. 702, s. 11.)

§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.—A. Whether or not the total production from a pool be limited or prorated, no rule, regulation or order of the Division shall be such in terms or effect (1) that it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or (2) as to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

B. For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the Division shall,

after a hearing, establish a drilling unit or units for each pool. The Division may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the Division may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

C. Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may reasonably be necessary where it is shown, after notice and upon hearing, and the Division finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the Division shall take such action as will offset any advantage which the person securing the exception may have over producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

D. Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be ascertained practically; and to that end, the rules, regulations, permits and orders of the Division shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir energy. (1945, c. 702, s. 12.)

§ 113-393. Development of lands as drilling unit by agreement or order of Division.—A. **Integration of Interests and Shares in Drilling Unit.**—When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the Division shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the Division has received no protest thereto, or request for hearing thereon, whether or not ten days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the Division to develop and operate the integrated unit shall have the right to charge to

each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production, with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the Division shall determine the proper costs.

B. When Each Owner May Drill.—Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the Division is without authority to require integration as provided for in subdivision A of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

C. Co-Operative Development Not in Restraint of Trade.—Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the co-operative development and operation thereof, when such agreements are approved by the Division, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

D. Variation from Vertical.—Whenever the Division fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the Division shall prescribe rules, regulations and orders governing the reasonableness of such variation. (1945, c. 702, s. 13.)

§ 113-394. Limitations on production; allocating and prorating "allowables."—A. Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the Division shall limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this State. The Division shall then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Division shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and shall formulate rules set-

ting forth standards or a program for the distribution of the "allowable" for the State, and shall distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Division shall permit the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Division shall fix the "allowable" for the pool so that waste will be prevented.

B. The division shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State. In allocating "allowables" to pools, the Division shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Division shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

C. Whenever the Division limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Division shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection I of section nine of this law [§ 113-392, subsec. D], subject to the reasonable necessities for the prevention of waste.

D. Whenever the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the Division shall limit the total amount of gas which may be produced from such pool. The Division shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection one of section nine of this law whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law [§ 113-392, subsec. D]. As far as applicable, the provisions of subsection A of this section shall be followed in allocating any "allowable" of gas for the State.

E. After the effective date of any rule, regulation, or order of the Division fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized. (1945, c. 702, s. 14.)

Editor's Note.—Subsections C and D of this section refer to "subsection I" and "subsection one" of section nine. Apparently the reference should have been to subsection D of section twelve, codified herein as § 113-392.

§ 113-395. Notice and payment of fee to Division before drilling or abandoning well; plugging abandoned well.—Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the

Division upon such form as it may prescribe and shall pay a fee of fifty dollars (\$50.00) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole promptly shall be plugged in the manner and within the time required by regulations to be prescribed by the Division, and the owner of such well shall give notice, upon such form as the Division may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of fifteen dollars (\$15.00). No well shall be abandoned until such notice has been given and such fee has been paid. (1945, c. 702, s. 15.)

§ 113-396. Wells to be kept under control.—In order to protect further the natural gas fields and oil fields in this State, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after twenty-four (24) hours' written notice by the Division given to him or to the person in possession of such well, make reasonable effort to control such well.

In the event of the failure of the owner of such well within twenty-four (24) hours after service of the notice above provided for, to control the same, if such can be done within the period, or to begin in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the Division shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well all at the reasonable expense of the owner of the well. In order to secure to the Division the payment of the reasonable cost and expense of controlling or plugging such well, the Division shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the Division shall be repaid. When all such costs and expenses have been repaid, the Division shall restore possession of such well to the owner; provided, that in the event the income received by the Division shall not be sufficient to reimburse the Division as provided for in this section, the Division shall have a lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the Division shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the Division which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well. (1945, c. 702, s. 16.)

§ 113-397. Hearing before Division; notice; rules, regulations or orders; public records and copies as evidence.—A. The Division shall prescribe its rules of order or procedure in hearings or other proceedings before it under this law, but in all hearings the rules of evidence as established by law shall be applied; provided, however, that the procedure before the Division shall be summary.

B. No rule, regulation or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the Division under the provisions of this law except after a public hearing upon at least seven days' notice given in such form as may be prescribed by the Division. Such public hearing shall be held at such time, place, and in such manner as may be prescribed by the Division, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

C. In the event an emergency is found to exist by the Division which in its judgment requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by

this section shall remain in force no longer than ten days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

D. Should the Division elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the Division in the same manner as is provided by law for the service of summons in civil actions in the superior courts of this State. Proof of the service by such agent shall be by the affidavit of the person making personal service.

E. All rules, regulations and orders made by the Division shall be in writing and shall be entered in full by the director of production and conservation in a book to be kept for such purpose by the Division, which book shall be a public record and be open to inspection at all times during reasonable office hours. A copy of such rule, regulation or order, certified by such director of production and conservation, shall be received in evidence in all courts of this State with the same effect as the original.

F. Any interested person shall have the right to have the Division call a hearing for the purpose of taking action in respect of any matter within the jurisdiction of the Division by making a request therefor in writing. Upon the receipt of any such request, the Division shall promptly call a hearing thereon, and, after such hearing, and with all convenient speed and in any event within thirty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. (1945, c. 702, s. 17.)

§ 113-398. **Procedure and powers in hearings by Division.**—In the exercise and enforcement of its jurisdiction, the said Division is authorized to summon witnesses, administer oaths, make ancillary orders and require the production of records and books for the purpose of examination at any hearing or investigation conducted by it. In connection with the exercise and enforcement of its jurisdiction, the Division shall also have the right and authority to certify as for contempt, to the court of any county having jurisdiction, violations by any person of any of the provisions of this article or of the rules, regulations or orders of the Division, and if it be found by said court that such person has knowingly and willfully violated same, then such person shall be punished as for contempt in the same manner and to the same extent and with like effect as if said contempt had been of an order, judgment or decree of the court to which said certification is made. (1945, c. 702, s. 18.)

§ 113-399. **Suits by Division.**—The said Division shall have the right to maintain an action in any court of competent jurisdiction within this State to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy, any valid rule, order or regulation made by the Division or promulgated under the provisions of this article, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders and regulations made and promulgated by the Division. (1945, c. 702, s. 19.)

§ 113-400. **Assessing costs of hearings.**—The said Division is hereby authorized and directed to tax and assess against the parties involved in any hearing the costs incurred therein. (1945, c. 702, s. 20.)

§ 113-401. **Party to hearings; review.**—The term “party” as used in this article shall include any person, firm, corporation or association. In proceedings for review of an order or decision of said Division, the Division shall have all rights and privileges granted by this article to any other party to such proceedings. (1945, c. 702, s. 21.)

§ 113-402. **Rehearings.**—Any party being dissatisfied with any order or decision of the said Division may, within ten (10) days from the date of the serv-

ice of such order or decision, apply for a rehearing in respect to any matter determined therein; the application shall be granted or denied by the Division within ten (10) days from the date same shall be filed, and if the rehearing be not granted within ten (10) days, it shall be taken as denied. If a rehearing be granted, the matter shall be determined by the Division within thirty (30) days after the same shall be submitted. No cause of action arising out of any order or decision of the Division shall accrue in any court to any party unless such party makes application for a rehearing as herein provided. Such application shall set forth specifically the ground or grounds on which the applicant considers such order or decision to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made after a rehearing, abrogating, changing or modifying the original order or decision, shall have the same force and effect as an original order. (1945, c. 702, s. 22.)

§ 113-403. Application for court review; copy served on director who shall notify parties.—Within thirty (30) days after the application for a rehearing is denied, or if the application is granted, then within thirty (30) days after the rendition of the decision on rehearing, the applicant may apply to the court of the county in which the order of the Division is to become effective for a review of such order or decision; if the order of the Division is to become effective in more than one county, the application for review shall be filed in the office of the clerk of the superior court of the county mentioned above, and shall specifically state the grounds for review upon which the applicant relies and shall designate the order or decision sought to be reviewed. The clerk of the superior court shall immediately send a certified copy thereof, by registered mail, to the director of production and conservation. The director shall immediately notify all parties who appeared in the proceedings before the Division by registered mail, that such application for review has been filed. (1945, c. 702, s. 23.)

§ 113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and upon appeal to Supreme Court.—The director of production and conservation, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the Division and of the evidence heard by the Division on the hearings of the matter or cause; provided, that the parties, with the consent and approval of the Division, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision, or the order or decision on rehearing, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is unlawful or unreasonable. After the said transcript shall be filed in the office of the clerk of the superior court of the county in which the application is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause. All proceedings under this section shall have precedence in any court in which they may be pending, and the hearing of the cause shall be by the court without the intervention of a jury. An appeal shall lie to the Supreme Court of this State from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the Supreme Court of this State shall be the same as in other civil actions, except as herein provided. No court of this State shall have power to set aside, modify or vacate any order or decision of the Division except as herein provided. (1945, c. 702, s. 24.)

§ 113-405. Introduction of new or additional evidence in superior

court; hearing of additional material evidence by Division.—No new or additional evidence may be introduced upon the trial of any proceedings for review under the provisions of this article, but the cause shall be heard upon the questions of fact and law presented by the evidence and exhibits introduced before the Division and certified to it: Provided, that if it shall be shown to the satisfaction of the court that any party to said proceeding has additional material evidence which could not, by the exercise of due diligence, have been produced at the hearing before the Division, or which for some good reason it was prevented from producing at such hearing, or if upon the trial of the proceeding the court shall find that the Division has erroneously refused to admit or consider material evidence offered by any party at the hearing before the Division, the court may, in its discretion, stay the proceedings and make an order directing the Division to hear and consider such evidence. In such cases, it shall be the duty of the Division immediately to hear and consider such evidence and make an order modifying, setting aside or affirming its former decision. The Division after hearing and considering such additional evidence shall vacate, modify, or affirm its decision and a transcript of the additional evidence and the order or decision of the Division shall be certified and forwarded to the clerk of the superior court in which such proceeding is pending and said superior court shall on the motion of any interested party, order the trial to proceed upon the transcript as supplemented, so as to enable the court to properly determine if the order or decision of the Division as originally made or as modified is in any respect unlawful or unreasonable. (1945, c. 702, s. 25.)

§ 113-406. Effect of pendency of review; stay of proceedings.—The filing or pendency of the application for review provided for in this article shall not in itself stay or suspend the operation of any order or decision of the Division, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the Division. No order so staying or suspending an order or decision of the Division shall be made by any court of this State otherwise than on five (5) days' notice and, after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. (1945, c. 702, s. 26.)

§ 113-407. Stay bond.—In case the order or decision of the Division is stayed or suspended, the order or judgment of the court shall not become effective until a bond shall have been executed and filed with and approved by the court, payable to the Division, sufficient in amount and security to secure the prompt payment, by the party petitioning for the stay, of all damages caused by the delay in the enforcement of the order or decision of the Division. (1945, c. 702, s. 27.)

§ 113-408. Enjoining violation of laws and regulations; service of process; application for drilling well to include residence address of applicant.—Whenever it shall appear that any person is violating, or threatening to violate, any statute of this State with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the Division, through the Attorney General, may bring suit against such person in the superior court in the county in which the well in question is located, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit the Division may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in such suit, and by the Division mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the director of production and conservation.

Each application for the drilling of a well in search of oil or gas in this State shall include the address of the residence of the applicant or each applicant, which address shall be the address of each person involved in accordance with the records of the director of production and conservation, until such address is changed on the records of the Division after written request. (1945, c. 702, s. 28.)

§ 113-409. Punishment for making false entries, etc.—Any person who, for the purpose of evading this law, or of evading any rule, regulation, or order made thereunder, shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this law or by any rule, regulation, or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this law or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person as may be required by the Division under authority given in this law or by any rule, regulation, or order made hereunder; or who, for such purpose shall remove out of the jurisdiction of the State, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper, pertaining to the transactions regulated by this law, or by any rule, regulation, or order made hereunder, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred dollars (\$500.00), or imprisonment for a term of not not more than six months, or both such fine and imprisonment. (1945, c. 702, s. 29.)

§ 113-410. Penalties for other violations.—Any person who knowingly and willfully violates any provision of this law, or any rule, regulation, or order of the Division made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed one thousand dollars (\$1,000.00) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Division, and such suit, by direction of the Division, shall be instituted and conducted in the name of the Division by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provision of this law, or any rule, regulation, or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person. (1945, c. 702, s. 30.)

§ 113-411. Dealing in or handling of illegal oil, gas or product pro-

hibited.—A. The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited. All persons purchasing any petroleum product must first be licensed to do so by the Petroleum Division.

B. Unless and until the Division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or illegal product, no penalty shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this law shall apply to any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for indentifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way any oil, gas or any product without complying with any rule, regulation or order of the Division relating thereto. (1945, c. 702, s. 31.)

§ 113-412. Seizure and sale of contraband oil, gas and product.—Apart from, and in addition to, any other remedy or procedure which may be available to the Division, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the Division believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the Attorney General, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross bill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within thirty days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and

the posting of such copy shall constitute constructive possession of such commodity by the State. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said warrant of attachment shall be executed as a writ of attachment as executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the Division or any agent of the Division as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this State relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the general fund of the State Treasurer, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character. (1945, c. 702, s. 32.)

§ 113-413. Funds for administration.—If the Governor shall proclaim and declare this law to be in full force and effect prior to March first, one thousand nine hundred and forty-seven, the funds necessary for the administration of this law shall be provided by the Governor from the contingency and emergency fund. (1945, c. 702, s. 33.)

§ 113-414. **Filing list of renewed leases in office of register of deeds.**
—On December thirty-first of each year, or within ten days thereafter, every person, firm or corporation holding petroleum leases shall file in the office of the register of deeds of the county within which the land covered by such leases is located, a list showing the leases which have been renewed for the ensuing year. (1945, c. 702, s. 34.)

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.

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ARTICLE 1.

Attorney General.

§ 114-1. **Creation of Department of Justice under supervision of Attorney General.**—There is hereby created a Department of Justice which shall be under the supervision and direction of the Attorney General, as authorized by article III, section eighteen, of the Constitution of North Carolina. (1939, c. 315, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 375.

§ 114-2. **Duties.**—It shall be the duty of the Attorney General:

1. To defend all actions in the Supreme Court in which the State shall be interested, or is a party; and also when requested by the Governor or either branch of the General Assembly to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

2. At the request of the Governor, Secretary of State, Treasurer, Auditor, Utilities Commission, Commissioner of Banks, Insurance Commissioner or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

3. To represent all State institutions, including the State's prison, whenever requested so to do by the official head of any such institution.

4. To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

5. To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.

6. To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.

7. To compare the warrants drawn by the Auditor on the State treasury with the laws under which they purport to be drawn. (1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; Code, s. 3363; 1893, c. 379; 1901, c. 744; Rev., s. 5380; C. S., s. 7694; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97.)

Cross References.—As to proceedings against corporations when reports filed by Corporation Commission, see § 62-63; as to actions by the Attorney General, see § 1-515; as to duty to bring actions for failure of charitable trust to file account, see § 36-20; as to duty to appear in contempt cases, see § 15-3; as to duty in prosecuting violations of laws governing monopolies

and trusts, see § 75-13; as to investigating violations of certain local government acts and duties connected therewith, see §§ 159-40, 159-41.

Opinions Advisory Only.—An opinion of the Attorney General, given in the performance of his statutory duty under subsection 5 is advisory only. *Lawrence v. Shaw*, 210 N. C. 352, 186 S. E. 504 (1936).

§ 114-3. **To devote whole time to duties.**—The Attorney General shall devote his whole time to the duties of the office and shall not engage in the private practice of law. (1929, c. 1, s. 1.)

§ 114-4. **Assistants; compensation; assignments.**—The Attorney General shall be allowed to appoint five assistant attorneys general, and each of such assistant attorneys general shall receive a salary to be fixed by the Director of the Budget. Two assistant attorneys general shall be assigned to the State Department of Revenue. The other assistant attorneys general shall perform such duties as may be assigned by the Attorney General: Provided, however, the provisions of this section shall not be construed as preventing the Attorney General from assigning additional duties to the assistant attorneys general assigned to the State Department of Revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182.)

Editor's Note.—The 1937 amendment re-wrote this section. The 1945 amendment increased the number of assistant attorneys general from three to four. The 1947 amendment increased the number from four to five and made other changes.

§ 114-5. **Additional clerical help.**—The Attorney General shall be allowed such additional clerical help as shall be necessary; the amount of such help and the salary therefor shall be fixed by the Budget Bureau and the Attorney General. (1925, c. 207, s. 2.)

§ 114-6. **Duties of Attorney General as to civil litigation.**—The Attorney General shall continue to perform all duties now required of his office by law and to exercise the duties now prescribed by law as to civil litigation affecting the State, or any agency or department thereof, and shall assign to the members of the staff all duties to be performed in connection with criminal prosecutions and civil litigation authorized by this article or by existing laws. (1939, c. 315, ss. 7, 8.)

§ 114-7. **Salary of Attorney General.**—The Attorney General shall receive an annual salary of eight thousand four hundred dollars (\$8,400.00), payable monthly: Provided, that from and after the expiration of the present term of office the Attorney General shall receive ten thousand and eighty dollars (\$10,080.00) per year, payable in equal monthly installments. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278.)

Cross References.—As to salary of assistants, see § 114-4; as to additional clerical help, see § 114-5.

The 1947 amendment increased the salary from \$7,500 to \$8,400, and the 1949 amendment added the proviso.

Editor's Note.—The 1947 amendment in-

§ 114-8. **Fees of Attorney General.**—In all appeals to the Supreme Court of persons convicted of criminal offenses, a fee of ten dollars against each person who shall not reverse the judgment shall be allowed the Attorney General, to be taxed among the costs of that court. The Attorney General shall pay these fees into the State treasury. (1873-4, c. 170; Code, s. 3737; Rev., s. 2747; 1907, c. 994, s. 1; C. S., s. 3871.)

Cross Reference.—As to fees of State officers, disposition and accounting, see § 138-3.

ARTICLE 2.

Division of Legislative Drafting and Codification of Statutes.

§ 114-9. **Creation of Division; powers and duties.**—The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Legislative Drafting and Codification of Statutes. There shall be assigned to this Division by the Attorney General duties as follows:

(a) To prepare bills to be presented to the General Assembly at the request of the Governor, and the officials of the State and departments thereof, and members of the General Assembly, and to advise with said officials in connection therewith, and to advise with and assist counties, cities, and towns in the drafting of legislation to be submitted to the General Assembly.

(b) To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated.

(c) In order that the laws of North Carolina, as set out in the General Statutes of North Carolina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, it shall also be the duty of the Division of Legislative Drafting and Codification of Statutes to establish and maintain a system of continuous statute research and correction. To that end the Division shall:

1. Make a systematic study of the general statutes of the State, as set out in the General Statutes and as hereafter enacted by the General Assembly, for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

2. Consider such suggestions as may be submitted to the Division with respect to the existence of such defects and the proper correction thereof.

3. Prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses. (1939, c. 315, s. 5; 1941, c. 35; 1943, c. 382.)

Editor's Note.—For note on the responsibilities of the Division, see 17 N. C. Law Rev. 376.

For article on the recodification of the statutes, see 19 N. C. Law Rev. 25.

§ 114-9.1. **Revisor of Statutes.**—The member of the staff of the Attorney General who is assigned to perform the duties prescribed by § 114-9 (c) shall be known as the Revisor of Statutes and shall receive a salary to be fixed by the Governor with the approval of the Council of State. (1947, c. 114, s. 1.)

Editor's Note. — For comment on this section, see 25 N. C. Law Rev. 459.

ARTICLE 3.

Division of Criminal and Civil Statistics.

§ 114-10. **Division of Criminal and Civil Statistics.**—The Attorney

General shall set up in the Department of Justice a division to be designated as the Division of Criminal and Civil Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(a) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(b) To collect and correlate similar information on the operations of the various courts of the State engaged in civil law administration so as to show the volume of civil litigation, including quasi-judicial proceedings before all of the commissions set up under the laws of this State, such information to provide a geographical distribution, the condition of the dockets in the several courts and counties, and such other information as may appear significant and helpful.

(c) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(d) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(e) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2.)

§ 114-11. Courts and officials thereof to furnish statistical data.—All courts, officers and officials thereof, shall furnish all statistical data with respect to such courts as is hereinbefore mentioned, such information to be furnished on forms provided by the Attorney General, and to be furnished at such time or times as may be required by the Attorney General. Any clerk or officer of any court in the State of North Carolina who shall willfully fail or refuse to furnish such statistical data, after demand therefor has been made by the Attorney General, shall be subject to be amerced, upon motion of the Attorney General, in the sum of two hundred dollars (\$200.00) in the superior court of the county in which such officer resides. (1939, c. 315, s. 4.)

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. Bureau of Investigation created; powers and duties.—In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the Governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

§ 114-13. Director of the Bureau; personnel.—The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the

will of the Attorney General, and whose salary shall be fixed by the Budget Bureau under § 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Budget Bureau under § 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus. (1937, c. 349, s. 4; 1939, c. 315, s. 6.)

§ 114-14. General powers and duties of Director and assistants.—

The Director of the Bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be State-wide. The Director of the Bureau and his assistants shall, at the request of the Governor, give assistance to sheriffs, police officers, solicitors, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the Commissioner of Paroles in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the Governor. (1937, c. 349, s. 5.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.—The Bureau shall, through its Director and upon request of the governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State, when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of § 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the solicitor of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280.)

Editor's Note.—The 1947 amendment inserted the second paragraph.

For brief comment on the amendment, see 25 N. C. Law Rev. 403.

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.

—In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the prosecuting officers of the State in the discharge of their duties. In the personnel of the Bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the Bureau, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the Bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work. (1937, c. 349, s. 7.)

§ 114-17. Co-operation of local enforcement officers.—All local enforcement officers are hereby required to co-operate with the said Bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s. 8.)

§ 114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new bureau; photographing and fingerprinting records.—The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Investigation, and the activities of the Identification Bureau now established at Central Prison may, in the future, if the Governor deem advisable, be carried on by the Bureau hereby established; except that the Bureau established by this article shall have authority to make rules and regulations whereby the photographing and fingerprinting of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this State to service upon the roads, may be taken and filed with the Bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

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- 115-369. Audit of school funds.
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SUBCHAPTER I. THE PUBLIC SCHOOL SYSTEM.

ARTICLE 1.

Interpretations and General Consideration.

§ 115-1. **A general and uniform system of schools.**—A general and uniform system of public schools shall be provided throughout the State, where-in tuition shall be free of charge to all children of the state between the ages of six and twenty-one years. The length of term of each school shall be as authorized by the provisions of the School Machinery Act; however, unless the term is suspended as provided by § 115-351 the term shall not be less than nine months or one hundred and eighty days.

Every man or woman twenty-one years of age or over who has not completed a standard high school course of study, or who desires to study the vocational subjects taught in such school, shall be given equal privileges with every other student in school. (1923, c. 136, s. 1; C. S., s. 5383; 1939, c. 358, s. 4; 1943, c. 255, s. 2.)

Cross References. — As to age requirement at time of enrollment, see § 115-371. As to extension of school term under provisions of the School Machinery Act, see § 115-351.

Editor's Note.—By enacting the School

Machinery Act of 1933, which was re-enacted each biennium thereafter until 1939 when it was made permanent (G. S. 115-347 through 115-382), a policy of State support for public schools was adopted so that such schools would be operated

under a uniform system throughout the entire State. Thus, much of the old law was annulled or subordinated to the new. The notes, therefore, in this chapter to the several sections, which have been revised to reflect the changes made by the 1939 School Law, should be read with this in mind as the majority of cases cited were decided prior to the present scheme of public school administration.

The 1943 amendment changed the term from eight to nine months. The amenda-

tory act provided that wherever the State supported school term is described or limited by the words "eight months" or "one hundred and sixty days" in the sections codified under this chapter, or in any other law, the same shall be construed to refer to the State supported nine months' or one hundred and eighty days' school term.

Cited in *Reid v. City Coach Co.*, 215 N. C. 469, 2 S. E. (2d) 578, 123 A. L. R. 140 (1939).

§ 115-2. Separation of races.—The children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race, and no such child shall be considered a white child. The descendants of the Croatan Indians, now living in Richmond, Robeson, and Sampson counties, shall have separate schools for their children. (1923, c. 136, s. 1; C. S., s. 5384.)

Cross References.—As to constitutional provision against racial discrimination, see Const. Art. IX, s. 2. As to separate schools for certain Indians, see § 115-66.

Constitutional.—This section is constitutional and valid. Art. XIV, sec. 8, of the Constitution, relating to marriages between the races, has no application. *Johnson v. Board*, 166 N. C. 468, 82 S. E. 832 (1914).

Croatan Indians.—The legislature is not prohibited by the Constitution from providing separate schools for Croatan Indians, and an act providing for such schools is valid. See *McMillan v. School Committee*, 107 N. C. 609, 12 S. E. 330

(1890).

The provision in regard to Croatan Indians does not embrace only those residing in Richmond, Robeson and Sampson counties, but Croatan Indians who put themselves within the limits of the schools, although they may come from other territory. See *Goins v. Trustees Indian Training School*, 169 N. C. 736, 86 S. E. 629 (1915).

But children of negro blood are not entitled to admission into the schools provided for Croatan Indians. See *McMillan v. School Committee*, 107 N. C. 609, 12 S. E. 330 (1890).

Cited in *Medlin v. County Board*, 167 N. C. 239, 83 S. E. 483 (1914).

§ 115-3. Schools provided for both races; taxes.—When the school officials are providing schools for one race it shall be a misdemeanor for the officials to fail to provide schools for the other races, and it shall be illegal to levy taxes on the property and polls of one race for schools in a district without levying it on all property and polls for all races within said district. (1923, c. 136, s. 1; C. S., s. 5385.)

Cross Reference.—See note to § 115-2.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-4. The school system defined.—The school system of each county shall consist of eleven years or grades, except when the provisions of §§ 115-5 to 115-7 have been complied with, in which event the system shall consist of twelve years or grades; and shall be graded on the basis of a school year of not less than one hundred and eighty days. The first seven or eight years or grades shall be styled the elementary school, and the remaining years or grades shall be styled the high school: Provided, the system, for convenience in administration, may be divided into three parts, the elementary school, consisting of the first six or seven grades, and a junior and senior high school, embracing the remaining grades, if

better educational advantages may be supplied. (1923, c. 136, s. 2; C. S., s. 5386; 1941, c. 158, s. 1; 1943, c. 255, s. 2.)

Editor's Note. — The 1943 amendment substituted "eighty" for "sixty" in the second sentence.

§ 115-5. Twelve grades authorized upon request by local unit.—Upon the request of the county board of education or the board of trustees of a city administrative unit, the State Board of Education shall provide for the operation of a school system to embrace twelve grades in accordance with such plans as may be promulgated by the State Superintendent of Public Instruction in any high school district for which such request is made at the time the organization statement is submitted. (1941, c. 158, s. 1; 1943, c. 721, s. 8.)

Cross Reference.—As to the organization statement, see § 115-355.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission." The amendatory act provided that "any reference to

the said school commission shall be deemed a reference to the State Board of Education."

For comment on this section, see 19 N. C. Law Rev. 512.

§ 115-6. Provision for cost of operating twelve grades.—When the request for the extension of the system of the public school to embrace twelve grades is submitted as provided in § 115-5, the cost of the same shall be paid from the appropriation made for the operation of the State nine months' school term in the same manner and on the same standards, subject to the provisions of §§ 115-5 to 115-7, as provided in the "School Machinery Act." (1941, c. 158, s. 2; 1943, c. 255, s. 2.)

Cross Reference. — As to the School Machinery Act, see § 115-347 et seq.

changed the term from eight to nine months.

Editor's Note. — The 1943 amendment

§ 115-7. Application blanks for requesting twelve grades; allotment of teachers.—The State Superintendent of Public Instruction and the State Board of Education shall provide the necessary blanks and forms for requesting an extension of the public school system to embrace twelve grades as herein provided, in the organization statements to be submitted by the several administrative units of the State in preparation for the school term of one thousand nine hundred and forty-two-forty-three, and annually thereafter, and the State Board of Education shall allot teachers for the school year one thousand nine hundred and forty-two-forty-three for any district heretofore operating a school program embracing twelve grades upon the basis of attendance for the preceding year: Provided, that for any district requesting to operate for the first time a system embracing twelve grades the allotment of teachers shall be based on a fair and equitable estimate of the prospective increase in attendance, as submitted by the requesting unit, and the average attendance for the preceding year. (1941, c. 158, s. 3; 1943, c. 721, s. 8.)

Cross Reference.—As to the organization statement, see § 115-355.

substituted "State Board of Education" for "State School Commission."

Editor's Note. — The 1943 amendment

§ 115-8. Administrative units classified.—Each county of the State shall be classified as a county administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the executive officer. A city administrative unit shall be classified as an area within a county that comprises a school population of 1000 or more and which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be

under the control of a board of trustees or school commissioners with a city superintendent as the administrative officer. (1943, c. 721, s. 8.)

Cross Reference.—As to school organization and administration generally, see § 115-352.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

Quoted in Kirby v. Stokes County Board of Education, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

Cited in Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-9. The term "district" defined.—The term "district" as used in this chapter is hereby defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include an incorporated town or city, or a township, or a part of a township. There shall be two different kinds of districts: (1) The non-local tax district, that is, one attendance area of the county administrative unit under the control of the county board of education, or the attendance area in a city administrative unit under the control of a board of trustees, but having no special local tax funds for supplementing the State and county funds; (2) The local tax district, that is, one or more attendance areas of a county administrative unit having a school population of 1000 or more and under the control of the county board of education, or the attendance area in a city administrative unit under the control of a board of trustees, but having in addition to State and county funds a special local tax fund voted by the people for supplementing State and county funds. A local tax district may embrace one or more elementary schools and/or a high school. (1923, c. 136, s. 3; C. S., s. 5387.)

Cross References.—As to school organization and administration generally, see § 115-352. As to power of State Board of Education to divide state into convenient number of school districts, see § 115-19.

Board of Education, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

Cited in Plott v. Board, 187 N. C. 125, 121 S. E. 190 (1924); Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-10. Schools classified and defined.—The different types of public schools are classified and defined as follows: (1) An elementary school, that is, a school that embraces a part or all of the eight elementary grades; (2) a high school, that is, a school that embraces a high school department of one or more grades above the elementary grades and containing not less than twenty pupils in average daily attendance; (3) a union school, that is, a school embracing both elementary and high school grades. (1923, c. 136, s. 4; C. S., s. 5388.)

§ 115-11. Officials defined.—The governing board of the county administrative unit is "the county board of education". The governing board of a school district is "the district committee". The governing board of a city administrative unit is "the board of trustees"; and wherever any other name is used to designate the governing board of a city administrative unit, the name "board of trustees" is hereby declared to be its equivalent.

The executive officer of the county administrative unit, and the executive officer of the city administrative unit, shall be called "superintendent". The executive head of a district or school shall be called "principal". (1923, c. 136, s. 5; C. S., s. 5389.)

§ 115-12. School day defined.—A school day is defined to mean the number of hours each day the public schools are conducted and the time teachers are employed to instruct pupils or to supervise their activities. (1923, c. 136, s. 6; C. S., s. 5390.)

Cross Reference. — For definition of school month, see § 115-351.

§ 115-13. Part-time classes defined.—The term "part-time classes" is

defined to mean the period provided for those pupils who may be able to attend school for only one or more recitations or exercises daily. (1923, c. 136, s. 7; C. S., s. 5391.)

§ 115-14. A standard high school defined.—A standard high school is defined as a high school that presents the following minimum requirements: A school term of not less than one hundred and eighty days; four years or grades of work beyond the elementary school; three teachers holding required certificates; not less than forty-five pupils in average daily attendance, a program of studies approved by the State Superintendent of Public Instruction, and such equipment as may be deemed necessary by the State Superintendent of Public Instruction to make the instruction beneficial to pupils: Provided, however, that in schools maintaining a nine months' term, meeting all other requirements, and offering superior instruction, fewer than forty-five pupils in average daily attendance may be considered. (1923, c. 136, s. 8; C. S., s. 5392; 1927, c. 40; 1943, c. 255, s. 2.)

Editor's Note — The 1943 amendment substituted "eighty" for "sixty" in the second sentence.

§ 115-15. Public school funds defined.—All revenues of the State for the maintenance and support of the public school system of the State shall be divided into three funds, as follows:

(a) The State Literary Fund—or all funds of the State heretofore derived from the sources enumerated in section four, Article IX of the State Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon, shall be a fund separate and distinct from the other funds of the State, to be known as the State Literary Fund, and shall be loaned by the State Board of Education to county boards of education, in accordance with law, for the purpose of aiding in the erection and equipment of schoolhouses.

(b) The Special Building Fund—or all funds derived from the sale of State bonds authorized by the General Assembly to be sold and loaned by the State Board of Education to county boards of education for the special purpose of aiding in the erection and equipment of schoolhouses, and designated by the General Assembly as a special building fund.

(c) The State Public School Fund—or all other funds derived from all other sources in accordance with law, and deposited in the State treasury for the support and maintenance of the public school system and all forfeitures, fines and penalties imposed by the State Board of Education for the failure of any company or corporation to keep any contract entered into between the State Board of Education and said company. (1923, c. 136, s. 9; C. S., s. 5393.)

Cross Reference. — As to how school funds shall be paid out, see § 115-368.

§ 115-15.1. Majority vote in elections on bond issues, etc.—Wherever in chapter 115, General Statutes, or in any other statute, general, public or local, requirement is made that the levy of a tax or the issuance of bonds or the change of any boundary of school taxing districts is made to depend upon the vote of the majority of the qualified voters or a majority of the registered voters or any similar phrase, said law shall be and hereby is amended to require a majority of the qualified voters voting at such election on such propositions, the purpose hereof being to make all of said laws correspond to requirements of article 7, section 7, of the Constitution of North Carolina, as amended. (1949, c. 1033, s. 2.)

Cross Reference.—For similar provision relating to majority vote in bond elections, see § 153-92.1.

Editor's Note.—For brief comment on this section, see 27 N. C. Law Rev. 454.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

ARTICLE 2.

The State Board of Education.

§ 115-16: Repealed by Session Laws 1943, c. 721, s. 2.

Editor's Note.—The repealed section related to the incorporation and general corporate powers of the State Board of Education. Session Laws 1945, c. 804, restoring the corporate existence of the Board, was repealed by Session Laws 1945, c. 1026.

§ 115-16.1. **Educational districts.**—The State of North Carolina is divided into eight educational districts as follows:

First District

Beaufort County, Bertie County, Camden County, Chowan County, Currituck County, Dare County, Gates County, Hertford County, Hyde County, Martin County, Pasquotank County, Perquimans County, Pitt County, Tyrell County, Washington County.

Second District

Brunswick County, Carteret County, Craven County, Duplin County, Greene County, Jones County, Lenoir County, New Hanover County, Onslow County, Pamlico County, Pender County, Sampson County, Wayne County.

Third District

Durham County, Edgecombe County, Franklin County, Granville County, Halifax County, Johnston County, Nash County, Northhampton County, Vance County, Wake County, Warren County, Wilson County.

Fourth District

Bladen County, Columbus County, Cumberland County, Harnett County, Hoke County, Lee County, Montgomery County, Moore County, Richmond County, Robeson County, Scotland County.

Fifth District

Alamance County, Caswell County, Chatham County, Davidson County, Forsyth County, Guilford County, Orange County, Person County, Randolph County, Rockingham County, Stokes County.

Sixth District

Anson County, Cabarrus County, Cleveland County, Gaston County, Lincoln County, Mecklenburg County, Stanly County, Union County.

Seventh District

Alexander County, Alleghany County, Ash County, Avery County, Burke County, Caldwell County, Catawba County, Davie County, Iredell County, Rowan County, Surry County, Watauga County, Wilkes County, Yadkin County.

Eighth District

Buncombe County, Cherokee County, Clay County, Graham County, Haywood County, Henderson County, Jackson County, Macon County, McDowell County, Madison County, Mitchell County, Polk County, Rutherford County, Swain County, Transylvania County, Yancey County. (1945, cc. 622, 923.)

§ 115-17. **Power to purchase at mortgage sales; payment of drainage assessments.**—The State Board of Education is authorized to purchase, at public sale, any land or lands upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district already

constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual. (Ex. Sess. 1924, c. 24.)

§ 115-18. Power to adjust debts for purchase price of lands sold; sale of mortgages, etc.—The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds or other evidence of indebtedness without payment, when, in the discretion of the said Board, it appears that it is proper to do so. Said Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness. (1925, c. 220.)

§ 115-19. Powers and duties of the Board.—The State Board of Education shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the textbooks to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. (Const., art. 9, s. 10; R. S., cc. 66, 67; R. C., c. 66; 1881, c. 200, s. 4; Code, s. 2506; Rev., s. 4033; C. S., s. 5395; 1943, c. 721, s. 3.)

Cross References.—For subsequent law affecting this section, see § 115-31.1 et seq. As to authority of Board to alter or dissolve city school administrative units, see § 115-361.1. As to authority of Board to advertise for public school teachers, see Session Laws 1949, c. 1264. As to authority of Board to continue study of public school system, as undertaken by State Ed-

ucation Commission established by chapter 724 of 1947 Session Laws, codified as §§ 143-261 through 143-266, see Session Laws 1949, c. 1116, s. 6.

Editor's Note. — The 1943 amendment rewrote this section.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 362.

§ 115-19.1. Succeeds to property, powers, functions and duties of abolished commissions and boards; power to take, hold and convey property.—The State School Commission, the State Textbook Commission, the State Board of Vocational Education, and the State Board of Commercial Education are abolished from and after the first day of April, one thousand nine hundred and forty-three and from and after said date the State Board of Education as constituted under section eight of article nine of the Constitution of North Carolina, as amended at the November election of one thousand nine hundred and forty-two, shall succeed to the title to all property, real and personal, and shall succeed to and exercise and perform all the powers, functions and duties of said commissions, boards, and of the State Board of Education as constituted prior to the first day of April, one thousand nine hundred and forty-three, including the power to take, hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this State. (1943, c. 721, s. 1.)

Cross Reference. — For authority of State Board of Education to convey or lease marsh and swamp lands to Department of Conservation and Development, see §§ 146-99 through 146-101.

§ 115-20. Administration of public school system and educational

funds; membership of Board; officers; vacancies; quorum; compensation and expenses.—The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each congressional district to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools, and shall be secretary of the Board. There shall be a comptroller appointed by the Board, subject to the approval of the Governor as Director of the Budget, who shall serve at the will of the Board and who, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board. The appointive members of the State Board of Education shall be subject to confirmation by the General Assembly in joint session. A majority of the members of said Board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the State. The first appointments under this section shall be members from odd numbered congressional districts for two years, and members from even numbered congressional districts for four years, and, thereafter, all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The Board shall elect a chairman and a vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members of the Board shall be provided by the General Assembly. (Const., art. 9, ss. 9, 12, 13; 1881, c. 200, s. 2; Code, s. 2504; Rev., s. 4031; C. S., s. 5396; 1943, c. 721, s. 4.)

Editor's Note.—The 1943 amendment re-wrote this section.

tion, see § 115-31.1 et seq.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 362.

For subsequent law affecting this sec-

§ 115-21. **Record of proceedings.**—All the proceedings of the Board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction. (1881, c. 200, s. 3; Code, s. 2505; Rev., s. 4032; C. S., s. 5397.)

Cross Reference.—See § 115-31.7, par. 8.

§ 115-22. **Reports to General Assembly.**—The State Board of Education shall report to the General Assembly the manner in which the State Literary Fund has been applied or invested, with such recommendations for the improvement of the same as to it shall seem expedient. (1825, c. 1268, s. 2, P. R.; R. C., c. 66, s. 4; Code, s. 2507; 1903, c. 567, s. 1; Rev., s. 4034; C. S., s. 5398.)

§ 115-23. **Investments.**—The State Board of Education is authorized to invest in North Carolina four per cent bonds or in other safe interest-bearing securities, the interest on which shall be used as may be directed from time to time by the General Assembly for school purposes. (1891, c. 369; Rev., s. 4035; C. S., s. 5399.)

§ 115-24. **State Treasurer keeps accounts of Literary Fund; reports to General Assembly.**—The State Treasurer shall keep a fair and regular account of all the receipts and disbursements of the State Literary Fund, and shall report the same to the General Assembly at the same time when he makes his biennial account of the ordinary revenue. (1825, c. 1268, s. 2, P. R.; R. C., c. 66, s. 4; Code, s. 2507; 1903, c. 567, s. 1; Rev., s. 4034; C. S., s. 5400.)

§ 115-25. **Acceptance of federal aid for physical education.**—The State Board of Education is authorized to accept any federal funds that may be appropriated now or hereafter by the federal government for the encouragement

of physical education and to make all needful rules and regulations for promoting physical education. (1921, c. 146, s. 14; C. S., s. 5401.)

§ 115-25.1. Revolving fund for counties receiving federal aid for school lunches.—1. Fund Provided for.—In order that the school administrative units of the State may participate in grants in aid and allotments in kind made by the federal government to provide low cost lunches for the school children of the State and in order that funds may be made quickly available to supply the casual deficits incurred by the school administrative units of the State while awaiting payments of claims filed for approved federal aid the Director of the Budget is authorized to advance out of the general fund of this State a sum not exceeding three hundred thousand dollars (\$300,000.00) to be used as a revolving special fund by the State Board of Education to pay the counties of the State the amount of requisitions for funds approved by the State Board of Education that have been expended for school lunches in the schools of the counties and in the city school administrative units within the counties. These funds so advanced shall be returned to the general fund at the close of each school year.

2. Counties to Give Liens on Federal Funds.—The county boards of education and the tax levying authorities of the counties of the State are hereby authorized and required to give the State Board of Education liens on all federal funds received by the State Board of Education for payment to counties and in anticipation of which advances have been made to these counties by the State Board of Education.

3. Period for Advancement of Funds.—No advancement of funds shall be made to any county of the State for a longer period than that of the approved federal application on the basis of which the advancement of funds was made; provided, no funds shall be advanced to any county or city administrative school unit to cover the amount of the reimbursement due the school unit by the federal government covering the last month's lunch room operation in any school year. This period is construed to mean until final payment is made on the approved application.

4. Counties Authorized to Pledge Their Credit.—Since moneys advanced under the provisions of this section are for the purpose of supplying casual deficits incurred in anticipation of funds that have been approved for payment by the federal government upon the submission of properly prepared requisitions, it is the intent and purpose of the General Assembly to authorize the counties of the State to pledge their faith and credit in accordance with section four of article V, of the Constitution of the State of North Carolina.

5. Regulations.—Rules and regulations for advancing funds to the counties of the State under the provisions of this section and in addition to those recited in this section may be made by the State Board of Education.

6. Restrictions.—The advancement of funds to the counties of the State by the State Board of Education shall be made only to those counties receiving part payment of the cost of school lunches from the federal government. Should the federal government withdraw aid from the school lunch program or if for any reason the counties of the State do not participate in federal aid to school lunches or if changes are made in the distribution of federal funds for school lunches that make it unnecessary for further advances to be made to the counties of the State, all funds advanced under the provisions of this section shall be returned to the general fund of this State. (1945, c. 777.)

§ 115-25.2. Acceptance and administration of federal aid to public education.—In the event of the enactment by the Congress of the United States of legislation now pending in said Congress, known as Senate Bill No. 246, or any legislation designed for the same purpose, to authorize the appropriation of funds to assist the states and territories in financing a minimum education

program of elementary and secondary schools and for other purposes relating thereto, and in the event funds become available under appropriations made by Congress for this purpose, in order to qualify for receiving the funds so appropriated, the Governor of this State is hereby authorized and empowered to take such action and to authorize and empower any State officer, department, or agency to take such action and perform such service as may be required by the federal law for the acceptance and administration of said funds, which authority shall remain in effect until the adjournment of the first regular session of the legislature of this State after such federal legislation is enacted or until the legislature of this State takes the action required under the federal law to qualify and receive such federal funds, whichever first occurs, and, in the event federal funds become available to the states for elementary and secondary public schools by act of Congress, then in that event, the State Treasurer is designated to receive such funds for the State of North Carolina; the State Board of Education is designated as the State educational authority to administer these funds. These two agencies shall make all necessary audits, reports, and regulations required by the acts of Congress in order for the State of North Carolina to receive its share of funds.

In the event such federal funds are provided, the State Board of Education is authorized and empowered to provide aid to the county and city administrative units for maintenance of plant and for all other purposes in the public schools of the State as may meet the requirements set forth for the use of such federal funds, to the end that the State may profit maximally from the use of such funds. The State Board of Education is also authorized, with the approval of the Director of the Budget, to provide for such additional personnel in the Department of Public Instruction and the State Board of Education as may be necessary for adequate and necessary supervision and administration at State level, and the cost of such personnel, including administration, supervision, clerical help, travel expense, and other necessary expense shall be provided from such federal funds in accordance with federal rules and regulations pertaining thereto. Funds provided by federal appropriations shall be distributed by the State Board of Education on a just and equitable basis among the separate schools operated in this State. (1949, c. 1116, s. 4.)

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-26. Office at capital; copies of papers therein.—The Superintendent of Public Instruction shall keep his office at the seat of government. Copies of his acts and decisions and of all papers kept in his office and authenticated by his signature and official seal shall be of the same force and validity as the original. (1900, c. 525; Rev., s. 4089; C. S., s. 5402.)

§ 115-27. Salary of State Superintendent of Public Instruction.—The salary of the State Superintendent of Public Instruction shall be seven thousand five hundred dollars a year, payable monthly: Provided that from and after the expiration of the present term of office, the salary shall be nine thousand dollars (\$9,000.00) per year, payable in equal monthly installments. (1879, c. 240, s. 8; Code, s. 2737; 1901, c. 4, ss. 9, 11; 1903, c. 435, s. 2; 1903, c. 567, s. 6; 1903, c. 603; 1905, c. 533, ss. 2, 15, 16; Rev., s. 2745; 1907, c. 830, ss. 6, 11; 1907, c. 994; 1915, c. 247; 1917, cc. 167, 285; 1919, c. 247, s. 5; 1919, c. 293; C. S., s. 3869; 1921, c. 11, s. 1; 1935, c. 441; 1941, c. 1; 1947, c. 1041; 1949, c. 1278.)

Editor's Note.—The various amendments increased the salary, the 1949 amendment adding the proviso.

§ 115-28. **Powers and duties.**—The State Superintendent of Public Instruction is empowered and it shall be his duty:

1. Looks after Schools, Reports to Governor.—To look after the school interests of the State, and to report biennially to the Governor at least five days previous to each regular session of the General Assembly. His report shall give information and statistics of the public schools, and recommend such changes in the school law as shall occur to him.

2. Directs Schools, Enforces and Construes School Law.—To direct the operations of the public schools and enforce the laws and regulations in relation thereto.

3. Receives Evidence as to Superintendents' Performance of Duties.—To receive evidence as to unfitness or negligence of any superintendent, and when necessary to report it to the local school authorities for action.

4. Sends Circular Letter to School Officers.—To send to each school officer a circular letter enumerating his duties as prescribed in this chapter.

5. Investigates Other School Systems.—To correspond with leading educators in other states, to investigate systems of public schools established in other states, and, as far as practicable, to render the results of educational efforts and experiences available for the information and aid of the legislature and the State Board of Education.

6. Acquaints Himself with Local Educational Wants, Delivers Lectures, etc.—To acquaint himself with the peculiar educational wants of the several sections of the State, and to take all proper means to supply such wants, by counseling with local school authorities, by lectures before teachers' institutes, and by addresses before public assemblies on subjects relating to public schools and public school work.

7. Travels in Connection with Loan Fund, etc.—To go to any county when necessary for the due execution of the law creating a permanent loan fund for the erection of public schoolhouses. He shall include in his annual reports a full showing of everything done under the provisions of the law creating such permanent loan fund.

8. Signs Requisitions on Auditor.—To sign all requisitions on the Auditor for the payment of money out of the State treasury for school purposes.

9. Has Publications Made, etc.—To have the school laws published in pamphlet form and distributed on or before the first day of May of each year; to have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education; and to have printed all forms necessary and proper for the purposes of this chapter. (1900, c. 525; 1901, c. 4, ss. 8, 9; 1903, c. 435, s. 1; 1903, c. 751, ss. 11, 12; Rev., ss. 4089, 4090, 4091, 4092; 1909, c. 525, s. 2; 1923, c. 198; C. S., s. 5403.)

Editor's Note.—For subsequent law relating to duties of Superintendent, see § 115-31.7.

§ 115-29. **Division of Professional Service.**—There shall be created in the office of the Superintendent of Public Instruction a Division of Professional Service, having a director and such assistants, clerks, and stenographers as may be necessary and consistent with the appropriation made for this Division. All rules and regulations governing the certification of teachers passed by the State board of examiners and institute conductors, and now in force, shall be continued in full force and effect until amended or repealed by the authority of the State Board of Education, which is hereby constituted the legal board for certifying or providing for the certification of all teachers. (1921, c. 146, s. 16; C. S., s. 5404.)

§ 115-30. **Division of Negro Education.**—To secure better supervision of negro education in all normal schools, training schools, high schools, elementary

schools, and teacher training departments in all colleges for negroes over which the State now or hereafter may have any control, the State Board of Education is authorized, upon the recommendation of the Superintendent of Public Instruction, to employ a director of negro education, and such supervisors, assistants, both clerical and professional, as may be necessary to carry out the purposes of this section not inconsistent with the amount of the appropriation, and to define the duties of the same. (1921, c. 146, s. 17; C. S., s. 5405.)

§ 115-31. Division of Publications.—There shall be created in the office of the Superintendent of Public Instruction a Division of Publications, having a director and such assistants as may be needful to carry out the provisions of this law. The director shall be appointed by the Superintendent of Public Instruction, and the salary and expenses shall be fixed by the Budget Bureau.

All publications issued from the office of the Superintendent of Public Instruction shall be edited by the director and no printing shall be authorized until approved by the Superintendent of Public Instruction.

The director of publications, with the approval of the Superintendent of Public Instruction, shall have control of all publications and such other duties as may be assigned him by the Superintendent of Public Instruction. All county or city superintendents and other public school officials receiving publications from the office of the Superintendent of Public Instruction shall be required to keep a record of publications received, the number of each on hand at the close of the year, and whenever it shall appear that the county or city superintendent or other school officials are careless or negligent in using or distributing the publications, bulletins, blanks, etc., received from the office of the Superintendent of Public Instruction, the State Superintendent of Public Instruction shall report the same to the county board of education, which board shall investigate the matter, and the county superintendent shall be required by the board of education to carry out the provisions of this law. The salary and expenses of the director shall be paid out of the State Public School Fund. (1921, c. 146, s. 18; C. S., s. 5406.)

ARTICLE 3A.

Fiscal Control of School Funds; Administrative Agencies; Controller.

§ 115-31.1. Purpose of article.—The purpose of this article is to provide for adequate and efficient fiscal control of all funds committed to the State Board of Education which might be used by the public schools; to define and clarify the duties and responsibilities of the State Board of Education and the State Superintendent of Public Instruction in connection with the handling of the fiscal affairs of the Board and such other duties and responsibilities as are set forth in this article. (1945, c. 530, s. 2.)

§ 115-31.2. Powers and duties of the State Board of Education.—The powers and duties of the State Board of Education are defined as follows:

1. To have the general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in section five of article IX of the State Constitution.
2. The State Board of Education shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted.
3. The State Board of Education shall have power to divide the State into a convenient number of school districts. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The term "school district" as used in this section includes city administrative units and all other kinds of school districts referred to in this chapter.
4. To regulate the grade, salary and qualifications of teachers.

5. To provide for the selection and adoption of the textbooks to be used in the public schools.

6. To apportion and equalize the public school funds over the state.

7. And generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto.

8. The Board may employ one or more attendance officers for each educational district, determine their duties, and fix their compensation, such compensation to be paid from the nine months' school fund, subject to the provisions of the Personnel Act.

9. The state board of education is hereby directed to fully comply with each and every provision of § 115-63 relating to the instruction on alcoholism and narcoticism in the public school system of the State of North Carolina. (1945, c. 530, s. 3; 1949, c. 597, s. 1.)

Editor's Note. — The 1949 amendment added the second and third sentences of subsection 3.

Section 2 of the 1949 amendatory act provides: "In all cases where the State School Commission or the State Board of Education has heretofore created or en-

larged a school district embracing contiguous portions of two or more counties, such action is hereby ratified and confirmed, and all enlargements of such school district made pursuant to G. S. 115-361 are likewise hereby ratified and confirmed."

§ 115-31.3. Appointment of controller.—The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board and who, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board. The salary of the controller shall be fixed by the Board, subject to the approval of the Director of the Budget, and shall be paid from Board appropriations. (1945, c. 530, s. 4.)

§ 115-31.4. Division of duties.—The Board shall divide its duties into two separate functions, insofar as may be practical, as follows:

1. Those relating to the supervision and administration of the public school system, of which the Superintendent shall be the administrative head, except as they relate to the supervision and management of the fiscal affairs of the Board.

2. Those relating to the supervision and administration of the fiscal affairs of the public school funds committed to the administration of the State Board of Education, of which the controller shall have supervision and management. (1945, c. 530, s. 5.)

§ 115-31.5. General principles basic to policies and procedures.—The following general principles shall be considered as basic to the policies and procedures to be adopted:

1. The State Board of Education is the central educational authority. The Board and its officials are charged with the responsibility of administering the public school system of North Carolina.

2. The present plan of the State supported public school system calls for a maximum of co-operative effort on the part of all school officials.

3. The State Board of Education is responsible for the planning and promotion of the educational system.

4. Programs of investigation and a well designed interpretation on a State-wide basis are a basic part of the duties of the State Board of Education. (1945, c. 530, s. 6.)

§ 115-31.6. Definition of terms.—The following words and references shall have the following meanings and interpretations:

1. "Board" means the State Board of Education.

2. "Superintendent" means Superintendent of Public Instruction.

3. "Funds" means any moneys, administration of which is by law committed

to the State Board of Education, whether derived from State or federal appropriation or allocation, private gift or donation, or acquired from any other source.

4. "Machinery Act" has reference to the School Machinery Act, being article 50 of this chapter.

5. "Administrative unit" shall include both county and city administrative units as defined in the Machinery Act. (1945, c. 530, s. 7.)

§ 115-31.7. Duties of the State Superintendent of Public Instruction as secretary of the State Board of Education.—It shall be the duty of the State Superintendent of Public Instruction, under the direction of the Board:

1. To organize and administer a Department of Public Instruction for the execution of the instructional policies established by the Board.

2. To keep the Board informed regarding developments in the field of public education.

3. To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

4. To make available to the public schools a continuous program of comprehensive supervisory services.

5. To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

6. To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

7. As secretary of the Board, he shall be custodian of the corporate seal of the Board and shall attest all deeds, leases, or written contracts to be executed in the name of the Board.

8. The secretary, unless officially or otherwise prevented, shall attend all meetings of the Board and shall keep a minute record of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and as soon thereafter as possible, he shall furnish to each member of the Board and the controller a copy of said minutes.

9. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and/or under seal, shall be executed in the corporate name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the probate of corporate instruments.

10. Such other duties as the Board may assign to him from time to time. (1945, c. 530, s. 8.)

§ 115-31.8. Controller to be administrator of fiscal affairs.—1. Executive Administrator.—The controller is constituted the executive administrator of the Board in the supervision and management of the fiscal affairs of the Board.

2. Fiscal Affairs of Board Defined.—All matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds, now or hereafter committed to the administration of the State Board of Education, are included within the meaning of the term "fiscal affairs of the board" and, under the direction of the Board, shall be supervised and managed by the controller. The fiscal affairs of the Board shall also include:

a. The preparation and administration of the State school budget, including all funds appropriated for the maintenance of the nine months' public school term.

b. The allotment of teachers.

c. The protection of State funds by appropriate bonds.

- d. Workmen's compensation as applicable to school employees.
- e. Sick leave.
- f. And all matters embraced in the objects of expenditure referred to in section IX, "Public School," in the act entitled "An Act to Make Appropriations for the Maintenance of the State's Departments, Bureaus, Institutions, and Agencies, and for Other Purposes," including therein:
 - (1) Support of nine months' term public schools.
 - (2) State Board of Education.
 - (3) Vocational education.
 - (4) Purchase of free textbooks.
 - (5) Vocational textile training school.
 - (6) Purchase of school busses.
 - (7) Including such federal funds as may be made available by acts of Congress for the use of public schools.
 - (8) And including also the administration of all funds derived from the sale and rental of textbooks in the public schools.
 - (9) Including the operation and administration of the transportation system; the operation of plant; and the other auxiliary agencies under the administration of the Board. (1945, c. 530, s. 9.)

§ 115-31.9. **Duties of the controller defined.**—1. The controller, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board.

2. The controller shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the Board and particularly the following:

a. State appropriation for maintenance of the nine months' public school term, which shall include all the objects of expenditure enumerated in § 115-356.

b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.

c. State literary and building funds and such other building funds as may be hereafter provided by the General Assembly for loans to county boards of education for school building and repair purposes.

d. State and federal funds for vocational education and/or other funds as may be provided by Act of Congress for assistance to the general secondary educational program.

e. Vocational rehabilitation funds.

f. State appropriation for the maintenance of the Board and its office personnel and including all employees serving under the Board.

g. Any miscellaneous funds within the jurisdiction of the Board not included in the above.

3. The controller shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the Board in preparing the State budget estimates required to be determined by the Board as to each administrative unit.

4. The controller shall certify to each administrative unit the teacher allotment as determined by the Board under § 115-355. The superintendents of the administrative units shall then certify to the Superintendent the names of the persons employed as teachers and principals, by districts and by races. The Superintendent shall then determine the certificate ratings of the teachers and principals and shall certify such ratings to the controller, who shall then determine, in accordance with the State standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each county and city administrative unit for teachers and principals to be included in the State budget for the current fiscal year.

5. The controller, before issuing any requisition upon the State Auditor for payment out of the State treasury of any funds placed to the credit of any administrative unit, under the provisions of § 115-367, shall satisfy himself:

a. That funds are lawfully available for the payment of such requisition; and
b. Where the order covers salary payment to any employee or employees, that the amount thereof is within the salary schedule or salary rating of the particular employee.

6. The controller, under the direction of the Board, shall purchase, through the Division of Purchase and Contract, all school busses to be used as replacements of old publicly owned busses, both as to chassis and bodies, under the provisions of § 115-377. He shall allocate all replacement busses so purchased to the various administrative units.

7. Under the direction of the Board, the controller shall procure, through the Division of Purchase and Contract, a contract or contracts for the purchase of the estimated needs and requirements of the several administrative units covering the items of fuel, gasoline, grease, tires, tubes, motor oil, janitor's supplies, instructional supplies including supplies used by the State Board of Education, textbooks, and all other supplies the payment for which is made from funds committed to the administration of the Board.

8. The controller, under the direction of the Board, shall have jurisdiction in all school bus transportation matters and in the establishment of all school bus routes, under the provisions of § 115-376.

9. The controller, in co-operation with the State Auditor, shall have jurisdiction in the auditing of all school funds, under the provisions of § 115-369, and also in the auditing of all other funds which by law are committed to the administration of the Board.

10. The controller shall attend all meetings of the Board and shall furnish all such information and data concerning the fiscal affairs of the Board as the Board may require.

11. The controller, subject to the approval of the Board, shall employ all necessary employees who work under his direction in the administration of the fiscal affairs of the Board.

12. Upon all matters coming within the supervision and management of the controller, he shall report directly to the Board.

13. The controller shall perform such other duties as may be assigned to him by the Board from time to time.

14. The controller shall furnish to the Superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties. (1945, c. 530, s. 10.)

§ 115-31.10. General regulations.—(1) Adoption of Textbooks.—A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(2) Regular Meetings of Board.—The regular meetings of the Board shall be held each month on a day certain, as determined by the Board, in the Education Building at Raleigh. The hour of meeting and the meetings may be continued from day to day, or to a day certain, until the business before the Board has been disposed of.

(3) Special Meetings.—Special meetings of the Board may be set at any regular meeting or may be called by the secretary upon the approval of the chairman. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post office address. Such notice must be deposited in the Raleigh Post Office at least five days prior to the date of meeting.

(4) Presiding Officer.—The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice chairman shall preside; and in the absence of both the chairman and the vice chairman, the Board shall name one of its own members as chairman pro tempore.

(5) Voting.—No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member. The chairman shall not vote except in cases when his vote is necessary to break a tie. The secretary, as a Board member, is entitled to vote on all matters before the Board.

(6) Other Regulations.—The Board shall make all other rules and regulations necessary to carry out the purpose and intent of this article. (1945, c. 503, s. 11.)

ARTICLE. 3B.

Division of Special Education for Handicapped Persons.

§ 115-31.11. **Creation and purpose.**—There is created within the State Department of Public Instruction a Division of Special Education for the promotion, operation, and supervision of special courses of instruction for handicapped, crippled, and other classes of individuals requiring special types of instruction. (1947, c. 818, s. 1.)

§ 115-31.12. **Division administered by director; appointment and qualifications.**—The Division of Special Education shall be administered by a director under the general supervision of the State Department of Public Instruction. The director shall be appointed by the State Board of Education on the recommendation of the State Superintendent. The director shall be qualified for his duties on the basis of education, training and experience. (1947, c. 818, s. 2.)

§ 115-31.13. **Powers and duties of director.**—In carrying out the functions of the Division of Special Education the director, with the approval of the State Board, shall have and perform the following powers and duties:

A. To aid school districts in the organization of special schools, classes and instructional facilities for handicapped children, and to supervise the system of special education for handicapped children in the several districts of the State.

B. To employ instructors and establish special courses of instruction for adult handicapped individuals.

C. To establish standards for teachers to be employed under the provisions of this article, to give examinations for teachers who qualify to teach handicapped individuals and to issue certificates to teachers who qualify for such teaching.

D. To adopt plans for the establishment and maintenance of day classes in schools, home instruction and other methods of special education for handicapped individuals.

E. To prescribe courses of study and curriculum for special schools, special classes and special instruction of handicapped individuals, including physical and psychological examinations, and to prescribe minimum requirements for handicapped persons to be admitted to any such special schools, classes, or instruction.

F. To provide for recommendation by competent medical and psychological authorities of the eligibility of handicapped persons for admission to, or discharge from, special schools, classes, schools or instruction.

G. To co-operate with school districts in arranging for a handicapped child to attend school in a district other than the one in which he resides when there is no available special school, classes or instruction in the district in which he resides.

H. To co-operate with existing agencies such as the State Department of Public Welfare, the State Department of Public Health, the State schools for

the blind and deaf, the State tuberculosis sanatoria, the children's hospitals, or other agencies concerned with the welfare and health of handicapped individuals, in the co-ordination of their educational activities.

I. To investigate and study the needs, methods, and costs of special education for handicapped persons.

J. To make rules and regulations to carry out the foregoing powers and duties. (1947, c. 818, s. 3.)

§ 115-31.14. Duties of State Board of Education.—The State Board of Education, subject to available appropriations for carrying out the purpose of this article, shall:

A. Adopt plans for equitable reimbursement of school districts for costs in carrying out programs of special education as provided for herein.

B. Provide for the purchase and otherwise acquire special equipment, appliances, and other aides for use in special education and to loan or lease same to school districts under such rules and regulations as the Department may prescribe.

C. Establish and operate special courses of instruction for handicapped individuals and in proper case provide bedside training in hospitals, sanatoria, and such other places as the director finds proper. (1947, c. 818, s. 4.)

Editor's Note.—The word "aides" in sub-section B appears in the authenticated copy of the act. However, it seems that the word "aids" must have been intended by the General Assembly.

§ 115-31.15. Eligibility for special instruction; definition of handicapped person.—Any person with a physical or mental handicap shall be eligible for appropriate special instruction provided for in accordance with this article. For the purpose of this article a handicapped individual shall be deemed to include any person with a physical or mental handicap. (1947, c. 818, s. 5.)

§ 115-31.16. Special classes or instruction for handicapped persons.—The Board of Education of any school district which has one or more handicapped individuals, with the approval of the Superintendent of Public Instruction and the State Board of Education, may establish and organize suitable special classes or instruction in regular classes or in the homes and may provide special instruction as part of the school system for such handicapped individuals as are entitled to attend schools therein. In case of the deaf or the hard of hearing and speech defective children, if it is more economical to do so, the director of special education, under the direction of the State Superintendent and with the approval of the State Board of Education, may set up facilities for a county-wide plan to provide itinerate lip reading or speech teachers. In the event there are not enough children of any special class, such children may be transferred to a school in a school district where such special classes have been established. Such transfers may be made by mutual agreement of the school authorities, subject to the approval of the director of special education. (1947, c. 818, s. 6.)

§ 115-31.17. Reimbursement of school districts having special education for handicapped persons.—Any school district which has maintained a previously approved program of special education for handicapped individuals during any school year shall be entitled to and receive reimbursement from the State as determined by the State Board of Education for the excess cost of instruction of the individuals in said program of special education above the cost of instruction of pupils in the regular curriculum of the district which shall be determined in the following manner:

Each board shall keep an accurate, detailed, and separate account of all monies paid out by it for the maintenance of each of the types of classes and schools for the instruction and care of pupils attending them and for the cost of their transportation, and should annually report thereon, indicating the excess cost for

each elementary or high school pupil for the school year ending in June, over the last ascertained average cost for the instruction of normal children in the elementary public schools or public high schools, as the case might be, of the school district for a like period of time of attendance as such excess is determined and computed by the board and make claim for the excess as follows:

Applications for reimbursement for excess costs must first be submitted through the office of the director of special education to the Superintendent of Public Instruction and the controller of the State Board of Education. If such applications are approved by them claims for excess cost shall be made as follows:

(a) To the county superintendent of schools, in triplicate, on or before July 15th, for approval on vouchers prescribed by the director of special education, the vouchers indicating the excess cost computed in accordance with rules prescribed by said director. The county superintendent of schools shall provide the director of special education with two copies of the vouchers on or before August 1st.

(b) The controller of the State Board of Education, before approving any such voucher, shall determine whether such claim is in fact eligible for the special educational service and whether the special educational service set forth in the application for State aid was in fact rendered him by the school board.

(c) Failure on the part of the school board to prepare and certify the report of claims for excess costs on or before July 15th, of any year, and if failure thereafter to prepare and certify such reports to the director of special education within ten days after receipt of notice of such delinquency sent to it by the director of special education by registered mail, shall constitute a forfeiture of the school district of its right to be reimbursed by the State for the excess cost of education of such children for such year. (1947, c. 818, s. 7.)

Editor's Note.—While the word "claim" word "claimant" must have been intended in subsection (b) appears in the authenticated copy of the act, it seems that the by the General Assembly.

§ 115-31.18. **Contributions and donations.**—The State Board is hereby authorized to receive contributions and donations to be used in conjunction with any appropriations that may be made to carry out the provisions and requirements of this article. (1947, c. 818, s. 8.)

§ 115-31.19. **Board authorized to use funds for program.**—The State Board of Education is authorized to provide from funds available for public schools for a program of special education as provided for in this article in accordance with such rules and regulations as the board may prescribe. (1949, c. 1033, s. 1.)

ARTICLE 3C.

Division of Instructional Service.

§ 115-31.20. **Supervisor of music education.**—There is hereby established in the Department of Public Instruction in the Division of Instructional service a position to be known as supervisor of music education in which shall be provided a person who shall give full time to the supervision and promotion of music education in the public schools of North Carolina and in the various communities in which said public schools are located. It shall also be the duty of said supervisor to work with the music departments of the colleges and universities of the State in which music education and other activities in music are carried on and to co-operate with the North Carolina Symphony Society, the North Carolina Recreation Commission, and other agencies, clubs, and organizations interested in the promotion of music in the State.

There is hereby appropriated of the general fund of the State the sum of seventy-five hundred dollars (\$7,500) annually to provide for the salary, travel, and other expenses of the supervisor herein provided. (1949, c. 981.)

ARTICLE 3D.

Division of Insurance.

§ 115-31.21. **Establishment of Division of Insurance; director; fire insurance safety inspectors and other employees.**—The State Board of Education is hereby authorized, directed and empowered to establish a department to be known as "Division of Insurance of the State Board of Education" and shall appoint some person with suitable training and experience as the director thereof with such designation of his position as may be provided by the State Board of Education. The State Board of Education shall provide such fire insurance safety inspectors and engineers and other employees as shall be found necessary to carry out the provisions of this article and fix the compensation of such director and employees with the approval of the personnel department, all of said employees to serve at the will of the State Board of Education. (1949, c. 1182, s. 1.)

§ 115-31.22. **Public School Insurance Fund; decrease of premiums when fund reaches 5% of total insurance in force.**—There shall be set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund" which fund hereafter in this article is referred to as "the fund." In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in this article and to provide payment for such losses as may be incurred therein, there is hereby appropriated to "the fund" the sum of two million dollars (\$2,000,000.00), which shall be paid from and charged to the State Literary Fund as set up and defined under subsection (a) of section 15 of article 1, chapter 115, General Statutes. When the reserves in "the fund" shall be increased by the payment of premiums by the governing boards of county and city administrative school units, or otherwise, to the extent of one million dollars (\$1,000,000.00), there shall be transferred from "the fund" back to the State Literary Fund the sum of one million dollars (\$1,000,000.00), and when "the fund" shall again be increased to the extent of another one million dollars (\$1,000,000.00), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars (\$1,000,000.00) in full reimbursement of the sum of two million dollars (\$2,000,000.00), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of county and city school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in "the fund" for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property as provided for in this article. Such part of the money in "the fund" as may not be needed for the payment of current demands thereon shall be invested by the State Treasurer in such securities as constitute permissible investments for State sinking funds, and all of the earnings thereon shall be paid into "the fund." The State Treasurer shall annually report to the State Board of Education and to the General Assembly the status of "the fund" and a detailed statement of the investments therein and earnings therefrom.

When the fund herein provided for reaches the sum of five per cent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain "the fund" at five per cent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of "the fund" are sufficient to maintain the same at five per cent (5%) of the total insurance in force, no premiums shall

be charged for the ensuing year, provided that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the fund shall be increased beyond five per cent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of this article within such five year period. (1949, c. 1182, s. 2.)

§ 115-31.23. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies.—From and after the first day of July, 1949, all county boards of education and all boards of trustees of city administrative units or other school governing boards may insure all school property within the unit against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in "the fund" hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in "the fund" shall be insured by "the fund" as of the expiration of the policy. Each school governing board shall give notice of its election to insure in "the fund" at least thirty days prior to such insurance becoming effective and shall furnish to the State Board of Education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect "the fund" shall act as coinsurer of the properties covered by such insurance to the same extent and in the same manner as is provided for coinsurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1949, c. 1182, s. 3; 1951, c. 1027, s. 7.)

Editor's Note. — The 1951 amendment 1951" formerly appearing in the first sentence deleted the words "and before January 1, tence.

§ 115-31.24. Inspections of insured public school properties.—The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections to be made by persons trained in making inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local school authorities shall be required, so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1949, c. 1182, s. 4.)

§ 115-31.25. Information to be furnished prior to insuring in the fund; providing for payment of premiums.—Governing boards of city and county administrative units shall at least thirty days before insuring in "the fund", furnish to the State Board of Education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an estimate of the present value of the said property. Valuation for purposes of insuring in "the fund" shall be reached by agreement in accordance with the procedure hereinafter set up in § 115-31.27 for adjustment of losses. Each governing board of city and county administrative units and the tax levying authorities shall be required to provide for the payment of premiums for insurance on the school properties of each unit, respectively, to the extent of not less than seventy-five per cent (75%) of the present value of the said properties, including the insurance in fire insurance companies and the insurance provided by "the fund" as set out herein. (1949, c. 1182, s. 5.)

§ 115-31.26. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof.—The State Board of Education shall as soon as practical determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31st, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school units at the lowest cost possible in keeping with the payment of cost of administration of this article and the creation of adequate reserves to pay losses which may be incurred. The State Board of Education shall furnish to each county and city administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse but shall remain in force until such property shall be abandoned for use as school property. From time to time the local school authorities shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The tax levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local school authorities shall within thirty (30) days from notice thereof, pay to the State Board of Education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six per cent (6%) per annum. (1949, c. 1182, s. 6.)

§ 115-31.27. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds.—In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, "the fund" shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which "the fund" is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and "the fund" shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education; one by the local governing board having charge of the property, and the two so appointed shall select a third—all of whom shall be disinterested persons, and qualified from experience to appraise and value such property. The appraisers so named shall file their written report with the State Board of Education, and with the local governing board having such property in charge. The costs of the appraisal shall be paid by "the fund". When approved by the State Board of Education, the amount of such loss or damage to school property in the control of the county administrative unit shall be paid to

the county treasurer, and the amount of loss or damage to property of a city administrative unit shall be paid to the treasurer of said unit upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasury of said units, as provided by this chapter for the disbursement of the funds of such unit. (1949, c. 1182, s. 7.)

§ 115-31.28. **Operating expenses.**—There is hereby appropriated to "the fund" to be expended by the State Board of Education for costs of operation under this article for the period of the next biennium, the sum of fifty thousand dollars (\$50,000.00), but such additional necessary cost of operation shall be paid from "the fund" and thereafter all the costs of the operation of the said fund shall be provided from the premiums charged to the local school boards for insurance carried by "the fund" and earnings of "the fund" from investments thereof. (1949, c. 1182, s. 8.)

§ 115-31.29. **Maintenance of inspection and engineering service; cancellation of insurance.**—The State Board of Education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in "the fund", as hereinbefore provided, and to expend for such purpose not in excess of ten per cent (10%) of the annual premiums collected from the local school authorities. The State Board of Education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion, because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local school board shall be given at least thirty (30) days' notice, and in the event said property can be restored to insurable condition, the State Board of Education may make such orders with respect to the continuance of such coverage as may be deemed proper. (1949, c. 1182, s. 9.)

§ 115-31.30. **Rules and regulations.**—The State Board of Education is hereby authorized and empowered to adopt all such rules and regulations providing for the details for insurance of public school properties in "the fund" as in their opinion are necessary for effectuating the purposes of this article. (1949, c. 1182, s. 10.)

ARTICLE 4.

Boys' Road Patrol.

§ 115-32. **Boys' Road Patrol organized.**—The State Board of Education, whose duty it shall be to appoint a director of the work of the Boys' Road Patrol in the State of North Carolina is hereby charged with the duty of organizing a brigade of school boys in this State to be called the Boys' Road Patrol, and to be composed of boys who attend the public schools of the State. (1915, c. 239, s. 1; C. S., s. 4931; 1925, c. 300, s. 1; 1937, c. 399, s. 1.)

Editor's Note.—The duty imposed upon the State Board of Education by this section was formerly placed on the Board of Agriculture. This provision is new with

Public Laws 1925, ch. 300.

Prior to the 1937 amendment, this section applied only to boys who attended rural public schools.

§ 115-33. **Duties of Patrol.**—The duties of such Patrol shall be to look after the maintenance of the road lying near the home of each member of the patrol, to drag and ditch same by the use of machinery placed in the care of the patrol by the State and county in such manner as the State Board of Education shall direct, to prevent forest fires by extinguishing fire along the public highway, to study safety rules and methods, and to practice research along safety lines to the end of removing hazards from the highways. (1915, c. 239, s. 2; C. S., s. 4932; 1925, c. 300, s. 2; 1937, c. 399, s. 2.)

Editor's Note.—By Public Laws, 1925, the supervisory power over the Boys' Road Patrol instead of the Board of Agri-

culture as formerly provided for, and the duty of preventing forest fires is also new.

The 1937 amendment added the latter

part of this section relating to study of safety rules, etc.

§ 115-34. Regulations for Patrol; prizes authorized.—The State Board of Education is specially empowered and directed to devise, organize, and adopt all such rules and regulations as may be necessary for effectually carrying out the purposes of this article; may award suitable prizes and pay all expenses of successful competitors and others engaged in such work in attendance upon meetings and for other purposes. (1915, c. 239, s. 3; C. S., s. 4933; 1925, c. 300, s. 3.)

Editor's Note.—The authority delegated to the State Board of Education under this section was formerly given to the Board

of Agriculture, the change taking effect by Public Laws 1925, ch. 300.

§ 115-35. Funds for support.—All moneys for the carrying out of this article shall be provided by the counties themselves in co-operation with the State of North Carolina. The commissioners of the counties of North Carolina are empowered to make annual donations out of the county funds for the purposes of this article. (1915, c. 239, ss. 4, 6; C. S., s. 4934; 1925, c. 300, s. 4.)

Editor's Note.—By Public Laws 1925, ch. 300, the State of North Carolina is substituted for the Board of Agriculture,

to co-operate with the counties, in raising the funds necessary to carry out the provisions of this article.

§ 115-36. Minimum preliminary appropriation by county.—Said brigade shall not be organized in any county until the commissioners of said county set apart and appropriate not less than one hundred dollars for the purposes of this article, to be spent in said county by the State Board of Education. (1915, c. 239, s. 5; C. S., s. 4935; 1925, c. 300, s. 5.)

Editor's Note.—By Public Laws 1925, ch. 300, the one hundred dollars set apart under this section is to be spent by the

State Board of Education and not by the Board of Agriculture as formerly provided for.

SUBCHAPTER III. DUTIES, POWERS AND RESPONSIBILITIES OF COUNTY BOARDS OF EDUCATION.

ARTICLE 5.

The Board: Its Corporate Powers.

§ 115-37. How constituted.—The county board of education in each county shall consist of the number of members which have been or may be appointed by the General Assembly in its biennial act or acts appointing members of boards of education. The term of office shall be for two years, except as may be otherwise provided in the said act or acts.

The members appointed under said act or acts shall qualify by taking the oath of office on or before the first Monday in April. (1923, c. 136, ss. 10, 11; 1923, c. 175, ss. 1, 3; C. S., s. 5410; Pub. Loc., Ex. Sess., 1924, cc. 63, 189; 1925, c. 104; Pub. Loc. 1925, c. 153; Pub. Loc. 1927, cc. 579, 583; 1929, cc. 202, 215; Pub. Loc. 1929, c. 335; 1931, cc. 39, 278, 313, 363; 1933, c. 208; 1935, c. 485; 1937, cc. 38, 79, 395; 1939, c. 392; 1941, c. 380; 1943, c. 511.)

Effect of Failure to Qualify on Day Prescribed.—A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, § 115-45, and where the members of the board appointed by the General Assembly fail to take the oath of office on the date prescribed by

this section, but take the oath on the next succeeding day, their failure to qualify on the day prescribed does not impair the existence of the corporate body, and where they have discharged the statutory duties imposed upon them, and no vacancy has been declared by the State Board of Education, and no proceedings in the nature of quo warranto have been

instituted to determine their right to office, the acts of the appointees as members of the board cannot be annulled by a proceeding to restrain the board from purchasing a school site in discharge of its

statutory duties. *Crabtree v. Board of Education*, 199 N. C. 645, 155 S. E. 550 (1930).

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718 (1930).

§ 115-38. How nominated and elected.—In all the counties of the State there shall be nominated in the year one thousand nine hundred and twenty-four, and biennially thereafter, at the party primaries or conventions, at the same time and in the same manner as that in which other county officers are nominated, a candidate or candidates, by each political party of the State, for member or members of the county board of education to take the place of the member or members of said board whose term next expires. The names of the persons so nominated in such counties shall be duly certified by the chairman of the county board of elections, within ten days after their nomination is declared by said county board of elections, to the Superintendent of Public Instruction, who shall transmit the names of all persons so nominated, together with the name of the political party nominating them, to the chairman of the committee on education in the next session of the General Assembly within ten days after it convenes. The General Assembly shall elect or appoint one or more, from the candidates so nominated, members of the county board of education for such county. Upon failure of the General Assembly to elect or appoint members as herein provided, such failure shall constitute a vacancy, which shall be filled by the State Board of Education. The term of office of each member shall begin on the first Monday of April of the year in which he is elected, and shall continue until his successor is elected and qualified. (1923, c. 136, s. 12; C. S., s. 5412.)

Local Modification. — Brunswick: 1949, c. 895; Jackson: 1943, c. 740; Montgomery: 1951, c. 560; Washington: 1951, c. 885.

§ 115-39. County board of elections to provide for nominations.—The county board of elections, under the direction of the State Board of Elections, shall make all necessary provisions for such nominations as are herein provided for. (1923, c. 136, s. 13; C. S., s. 5413.)

§ 115-40. Members to qualify.—Those persons who shall be elected members of the county board of education by the General Assembly must qualify by taking the oath of office on or before the first Monday in April next succeeding their election. A failure to qualify within that time shall constitute a vacancy. Those persons elected or appointed to fill a vacancy must qualify within thirty days after notification thereof. A failure to qualify within that time shall constitute a vacancy. (1923, c. 136, s. 14; C. S., s. 5414.)

Cited in Crabtree v. Board of Education, 199 N. C. 645, 155 S. E. 550 (1930).

§ 115-41. Vacancies in nominations.—If any candidate shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election by the General Assembly of the member or members of the county board of education for the county of such candidate, the vacancy caused thereby may be filled by the action of the county executive committee of the political party of such candidate. (1923, c. 136, s. 15; C. S., s. 5415.)

§ 115-42. Vacancies in office.—All vacancies in the membership of the board of education in such counties by death, resignation, or otherwise shall be filled by the action of the county executive committee of the political party of the member causing such vacancy until the meeting of the next regular session of the General Assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the General Assembly in such cases shall have occurred before the primary or convention held in such county, then in that event

nominations for such vacancies shall be made in the manner hereinbefore set out, and such vacancy shall be filled from the candidates nominated to fill such vacancy by the party primaries or convention of such county. All vacancies that are not filled by the county executive committee under the authority herein contained within thirty days from the occurrence of such vacancies shall be filled by appointment by the State Board of Education. (1923, c. 136, s. 16; C. S., s. 5416; 1931, c. 380.)

Editor's Note.—The act of 1931 struck out the words "remaining members of said county board of education" formerly appearing in the first sentence of this section and inserted in lieu thereof the words "action of the county executive committee of the political party of the member causing such vacancy."

this section which had been added by Public Laws 1923, c. 136, s. 16 and was as follows: "In the event that all or a majority of the members of the board die, resign or are removed from office, the vacancies shall be filled at once by the State Board of Education."

Cited in Board of Education v. Program, 197 N. C. 33, 147 S. E. 622 (1929).

§ 115-43. Eligibility for the office.—No person shall be eligible as a member of the county board of education who is not known to be a man of intelligence, of good moral character, of good business qualifications, and known to be in favor of public education. No person, while actually engaged in teaching in the public schools or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, and no member of a district committee or board of trustees, shall be eligible as a member of the county board of education. (1923, c. 136, s. 17; C. S., s. 5417.)

Constitutional Office.—Under sec. 7, Art. XIV, of the Constitution, one person cannot hold the office of county commis-

sioner and also be a member of the county board of education. State v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898).

§ 115-44. Organization of the board.—At the first meeting of the new board in April the members of the board shall organize by electing one of its members as chairman for a period of one year or until his successor is elected and qualified. The superintendent of public instruction shall be ex officio secretary to the board. He shall keep the minutes of the meetings of the board, but shall have no vote: Provided, that in the event of a vacancy in the county superintendency the board may elect one of its members to serve temporarily as secretary to the board. (1923, c. 136, s. 18; C. S., s. 5418.)

Stated in Russ v. Board of Education, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

§ 115-45. The board a body corporate.—The board of education shall be a body corporate by the name and style of "The Board of Education of County." By that name it shall hold all school property belonging to the county, and it shall be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January first, one thousand nine hundred, or who became bodies corporate by special act of the General Assembly, but who have since ceased to be bodies corporate; and where land or lands were conveyed by deed bearing date prior to January first, one thousand nine hundred, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land or lands are not now being used for educational purposes either by the county board of education of the county or the board of trustees of a special charter district wherein same are located the clerk of the superior court of the county

wherein such property or such land or lands are located shall convey said property or land or lands to the county board of education, unless same is located in a special charter district. In that event said property or land or lands shall be conveyed to the board of trustees of the special charter district. (1923, c. 136, s. 19; C. S., s. 5419.)

Action against Board on Teacher's Contract.—This section authorizes the maintenance of an action against a county board of education on a teacher's contract. *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

Cited in *Board v. Board*, 192 N. C. 274, 134 S. E. 852 (1926); *Hickory v. Catawba County*, 206 N. C. 165, 173 S. E. 56 (1934); *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733 (1935); *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

§ 115-46. Compensation of members.—The board of education may fix the compensation of each member at not to exceed five dollars per diem and five cents a mile to and from the place of meeting. And no member of the board shall receive any compensation for any services rendered except the per diem provided in this section for attending meetings of the board and traveling expenses when attending meetings of the board, or such other traveling expenses as may be incurred while performing duties imposed upon any member by authority of the board. (1923, c. 136, s. 20; C. S., s. 5420.)

Local Modification.—Davidson: 1951, c. 600; Forsyth: 1951, c. 1050, s. 1; Lenoir: 1949, c. 749; Mecklenburg: 1949, c. 383.

§ 115-47. Removal for cause.—In case the State Superintendent shall have sufficient evidence that any member of the county board of education is not capable of discharging or is not discharging the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of the county board of education, who shall call a meeting of the board at once to investigate the charges, and if found to be true, the board shall declare the office vacant. (1923, c. 136, s. 21; C. S., s. 5421.)

§ 115-48. Meetings of the board.—The county board of education shall meet on the first Monday in January, April, July and October. It may elect to hold regular monthly meetings, and to meet in special sessions as often as the school business of the county may require. (1923, c. 136, s. 22; C. S., s. 5422.)

§ 115-49. Powers; suits and actions.—(a) The county board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all moneys or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the county commissioners as is hereinafter provided.

(b) In all actions brought in any court against a county board of education for the purpose of compelling the board to admit any child or children who have been excluded from any school by the order of the board, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show to the contrary. (1923, c. 136, s. 23; C. S., s. 5423.)

Cited in *Board v. Board*, 192 N. C. 274, 134 S. E. 852 (1926).

§ 115-50. Power to subpœna and to punish for contempt.—The board shall have power to issue subpœnas for the attendance of witnesses. Subpœnas may be issued in any and all matters which may lawfully come within the powers of the board, and which in the discretion of the board require investigation; and it shall be the duty of the sheriffs, coroners and constables to serve such subpœnas upon payment of their lawful fees.

The county board of education of each county shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt it in the transaction of official business. (1923, c. 136, s. 24; C. S., s. 5424.)

§ 115-51. Witness failing to appear; misdemeanor.—Any witness who shall willfully and without legal excuse fail to appear before the county board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days. (1923, c. 136, s. 25; C. S., s. 5425.)

§ 115-52. Appeals to board from county officers.—An appeal shall lie from all county school officers to the county board of education, and such appeals shall be regulated by rules to be adopted by the county board of education. (1923, c. 136, s. 26; C. S., s. 5426.)

§ 115-53. Superior court to review board's action.—The superior courts of the State may review any action of the county board of education affecting one's character or right to teach. (1923, c. 136, s. 27; C. S., s. 5427.)

Where the county board of education orders the removal of school committeemen, § 115-74, who appeal under the provisions of this section, the judgment of the superior court judge holding the act of the board of education in removing the com-

mitteemen invalid and dismissing the appeal for want of jurisdiction is inconsistent and erroneous. *Board of Education v. Anderson*, 200 N. C. 57, 156 S. E. 153 (1930).

ARTICLE 6.

The Direction and Supervision of the School System.

§ 115-54. To provide for all the children of the county.—It is the duty of the county board of education to provide an adequate school system for the benefit of all the children of the county as directed by law. (1923, c. 136, s. 28; C. S., s. 5428.)

Cross Reference.—As to school organization generally, see § 115-352.

When Court Will Interfere.—The county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein, including the duty, among others, of selecting a school site, with which the courts will not interfere in the absence of its abuse. *McInnish v. Board*, 187 N. C. 494, 122 S. E. 182 (1924).

Discretion of Boards.—In the absence of statutory limitations upon the power to perform this duty, discretion is vested in said boards to locate, discontinue, transfer and establish high schools in the districts of their several counties. In the absence of abuse, this discretion cannot

be set aside or controlled by the courts. The principle stated and applied in deciding the question presented by the appeal in *Newton v. School Committee*, 158 N. C. 186, 73 S. E. 886 (1923), is well settled. *Clark v. McQueen*, 195 N. C. 714, 143 S. E. 528 (1928).

This section and § 115-61 vest in the sound discretion of the board of education of a county the right to transfer an existing school in one district to an adjoining district for the advantage of the residents of the county, and with the fair exercise of this discretion, on in the absence of manifest abuse, the courts will not interfere, or give injunctive relief. *Clark v. McQueen*, 195 N. C. 714, 143 S. E. 528 (1928). But see § 115-352.

§ 115-55. General powers.—All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other officials, are conferred and imposed upon the county board of education. (1923, c. 136, s. 29; C. S., s. 5429.)

Authority to Employ Janitors.—Under the provisions of this section the county board of education is authorized to

select and employ janitors for a school building in a local tax district in preference to one appointed by the district

school committee for the same position. *Wiggins v. Board of Education*, 198 N. C. 301, 151 S. E. 730 (1930).

Where the county purchasing agent purchases equipment for a school and gives a note for the same signed by him in the name of the school the county is not liable on the note, the purchasing agent having

no connection with the county board of education. *Keith v. Henderson County*, 204 N. C. 21, 167 S. E. 481 (1933).

Cited in *Wilkinson v. Board of Education*, 199 N. C. 669, 155 S. E. 562 (1930); *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-56. General control.—The county board of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency, shall have general control and supervision of all matters pertaining to the public schools in their respective counties, and they shall execute the school laws in their respective counties. But whenever duties are assigned to the county board of education in this subchapter, they shall not be construed so as to take away from the board of trustees of any city administrative unit any duties or other powers assigned to said board of trustees by the General Assembly. (1923, c. 136, s. 30; C. S., s. 5430; 1943, c. 721.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

Power Discretionary. — The courts may compel the county board of education to act upon discretionary powers conferred on them by the legislature, but cannot tell

them how they must act. *Key v. Board*, 170 N. C. 123, 86 S. E. 1002 (1915).

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-57. Fixing time of opening and closing schools.—The time of opening and closing the public schools in the several public school districts of the State, except in city administrative units, shall be fixed and determined by the county board of education in their respective counties. The board may fix different dates for opening the schools in different townships, but all the schools of each township must open on the same date, as nearly as practicable. (1923, c. 136, s. 32; C. S., s. 5432.)

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-58. Determination of length of school day.—The length of the school day shall be determined by the county board of education for all public schools under its jurisdiction and by the board of trustees of all other schools: Provided, the minimum time for which teachers shall be employed in the school-room or on the school grounds supervising the activities of children shall not be less than six hours. But county boards of education may authorize rural schools in certain seasons of the year, when the agricultural needs of the farm demand it, to be conducted for less than six hours a day: Provided further, it shall be the duty of the county boards of education and boards of trustees, wherever needs are presented, to provide part-time classes for pupils above the compulsory school age and for such other pupils as are unable because of physical defects to attend school for the full time designated for the classes in which they may be enrolled. (1923, c. 136, s. 33; C. S., s. 5433.)

Cross Reference. — As to authority to suspend the operation of schools for a limited time when low attendance or ne-

cessity demands it, see § 115-351.

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-59. Duty to enforce the compulsory school law.—It shall be the duty of teachers, principals, county or city superintendents of public instruction and attendance officers to enforce the compulsory school law in accordance with the rules and regulations adopted by the State Board of Education; and if they shall fail to perform their duties in this respect, it shall be the duty of the county board of education or board of trustees of the city administrative unit to

withhold the salary of such a person or to remove such a one from office. Any school official failing to obey the law in regard to compulsory attendance shall be guilty of a misdemeanor and may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 34; C. S., s. 5434.)

Cited in *Coggins v. Board of Education*,
223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-60. Continuous school census.—The State Board of Education shall adopt such rules and regulations as may be necessary for taking a complete census of the school population and for installing and keeping in the office of the county superintendent in each county of the State a continuous census of the school population. The cost of taking and keeping the census shall be a legitimate item in the budget and shall be paid out of the incidental fund. If any parent, guardian, or other person having the custody of a child, refuses to give any properly authorized census taker, teacher, school principal, or other school official charged with the duty of obtaining the census of the school population of any district, the necessary information to enable such person to obtain an accurate and correct census, or shall knowingly and willfully make any false statement to any person duly authorized to take the school census of any district relative to the age or the mental or physical condition of any child, he shall be deemed guilty of a misdemeanor and shall be fined not to exceed twenty-five dollars or imprisoned not to exceed thirty days in the discretion of the court. (1921, c. 179, s. 16; C. S., s. 5435; 1925, c. 95.)

Editor's Note.—The 1925 amendment added the last sentence of this section.

§ 115-61. The location of high schools.—Since the cost of good high school instruction is too great to permit the location of small high schools close together, it shall be the duty of the county board, wherever the needs demand it, to locate not more than one standard high school in each township or its equivalent: Provided, it shall be discretionary with county boards of education to continue standard high schools in existence in 1923 contrary to the provisions of this section, and to establish such high schools in townships in which city schools are already located. (1923, c. 136, s. 36; C. S., s. 5437.)

Cross Reference.—As to requirements schools and as to school organization in which must be met in establishing high general, see § 115-352.

§ 115-62. Subjects taught in the elementary schools.—The county board of education shall provide for the teaching of the following subjects in all elementary schools: Spelling, reading, writing, grammar, language and composition, English, arithmetic, drawing, geography, the history and geography of North Carolina, history of the United States, elements of agriculture, health education, including the nature and effect of alcoholic drinks and narcotics, and fire prevention.

It shall be the duty of the State Superintendent of Public Instruction to prepare a course of study outlining these and other subjects that may be taught in the elementary schools, arranging the subjects by grades and classes, giving directions as to the best methods of teaching them, and including type lessons for the guidance of the teachers. The board of education shall require these subjects in both public and private schools to be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language shall be guilty of a misdemeanor, and may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 39; C. S., s. 5440.)

Cited in *Coggins v. Board of Education*,
223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-63. Instruction on alcoholism and narcoticism.—In addition to health education, which is now required by law to be given in all schools sup-

ported in whole or in part by public money, thorough and scientific instruction shall be given in the subject of alcoholism and narcoticism.

The State Superintendent of Public Instruction is hereby authorized and directed to prepare, or cause to be prepared, for the use of all teachers who are required by this section to give instruction in the subjects of alcoholism and narcoticism, a course of study on health education, which shall embrace suggestions as to methods of instruction, outlines of lesson plans, lists of accurate and scientific source material, suggested adaptations of the work to the needs of the children in the several grades, and shall specify the kind of work to be done in each grade, and the amount of time to be devoted to such instruction. The State Board of Education shall be authorized, directed and empowered to select, approve, and adopt a simple, scientific textbook, which textbook shall be free from political propaganda, and approved by the State Board of Health and the faculty of the Medical School of the University of North Carolina, on the effects of alcoholism and narcoticism on the human system, and/or a different or revised text on "health" which shall contain chapters giving complete, detailed, and scientific information on the subjects, to be taught as a unit of work every year in the appropriate elementary grade, or grades, of the public schools of North Carolina. Adequate time shall be given to teach the subject efficiently. The work in the subject of alcoholism and narcoticism shall be a part of the work required for promotion from one grade to another: Provided also, that provision shall be made in the course of study prepared by the State Department of Public Instruction for teachers, aids and devices for the assistance of teachers in teaching the effects of alcoholism and narcoticism on the human system.

In all normal schools, teacher training classes, summer schools for teachers, and other institutions giving instruction preparatory to teaching or to teachers actually in service, adequate time and attention shall be given to the best methods in teaching health education, with special reference to the nature of alcoholism and narcoticism.

It shall be the duty of all officers and teachers, principals and superintendents in charge of any school or schools, comprehended within the meaning of this section, to comply with its provisions; and any such officer or teacher who shall fail or refuse to comply with the requirements of this section shall be subject to dismissal by the proper authorities. (1929, c. 96, ss. 1-3; 1935, c. 404; 1943, c. 721, s. 9.)

Cross Reference.—As to instruction in the prevention of forest fires, see § 113-60.

Editor's Note.—Prior to the amendment of 1935 the latter part of the second paragraph of this section specified the number of lessons on alcoholism and narcoticism. The section now goes into the subject in much more detail.

The 1943 amendment struck out the words "The State Textbook Commission and" formerly appearing at the beginning of the second sentence of the second paragraph.

Cited in *Newman v. Watkins*, 208 N. C. 675, 182 S. E. 453 (1935), dissenting opinion.

§ 115-64. Instruction in Americanism.—There shall be taught in the public schools of North Carolina a course of instruction which shall be known as Americanism.

There shall be included in the term "Americanism" the following general items of instruction:

- (a) Respect for law and order.
- (b) Character and ideals of the founders of our country.
- (c) Duties of good citizenship.
- (d) Respect for the national anthem and the flag.
- (e) A standard of good government.
- (f) Constitution of North Carolina.
- (g) Constitution of the United States.

The course of instruction in Americanism shall be taught not less than thirty hours during each and every school year and shall not be optional in the grade

or grades in which said course is taught. The State Board of Education shall, as soon as convenient, adopt some suitable and proper textbook which will conform as near as possible and practicable to the carrying out of the general items of instruction as herein contained, and the State Superintendent shall prepare or have prepared such outline courses of study, and shall distribute the same among the teachers of the State, as will give them proper direction in carrying out the provisions of this law.

The State Board of Education shall, before the beginning of the next school year, adopt such suitable rules and regulations as may be necessary as to the time, manner, grade or grades in which said course of Americanism shall be taught. (1923, c. 49; C. S., ss. 5441, 5442.)

Cross Reference.—As to instruction in the prevention of forest fires, see § 113-60.

Cited in 1 N. C. Law Rev. 308.

§ 115-65. Kindergartens may be established.—Upon a petition by the board of directors or trustees or school committee of any school district, endorsed by the county board of education, the board of county commissioners, after thirty days' notice at the courthouse door and three other public places in the district named, shall order an election to ascertain the will of the people within said district whether there shall be levied in such a district a special annual tax of not more than fifteen cents on the one hundred dollars worth of property and forty-five cents on the poll for the purpose of establishing kindergarten departments in the schools of said district. The election so ordered shall be conducted under the rules and regulations for holding special tax elections in special school districts, as provided in article 23 of this chapter.

The ballots to be used in said election shall have written or printed thereon the words, "For Kindergartens" and "Against Kindergartens."

If a majority of the qualified voters voting on such proposition shall vote in favor of the tax, then it shall be the duty of the board of trustees or directors or school committee of said district to establish and provide for kindergartens for the education of the children in said district of not more than six years of age, and the county commissioners shall annually levy a tax for the support of said kindergarten departments not exceeding the amount specified in the order of election. Said tax shall be collected as all other taxes in the county are collected and shall be paid by the sheriff or tax collector to the treasurer of the said school district to be used exclusively for providing adequate quarters and for equipment and for the maintenance of said kindergarten department.

Such kindergarten schools as may be established under the provisions of this section, or established in any other manner, shall be subject to the supervision of the State Department of Public Instruction and shall be operated in accordance with standards to be provided by the State Board of Education. (1923, c. 136, s. 40; C. S., s. 5443; 1945, c. 970, s. 1; 1949, c. 1033, s. 1.)

Editor's Note. — The 1945 amendment deleted the last or fourth paragraph of the section. And the 1949 amendment inserted in the third paragraph the words "voting on such proposition."

ment, see 27 N. C. Law Rev. 454.

Cited in Posey v. Board of Education, 199 N. C. 306, 154 S. E. 393 (1930); Coggin v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

For brief comment on the 1949 amend-

§ 115-66. Board shall provide schools for Indians in certain counties.—It shall be the duty of the county board of education to provide separate schools for Indians as follows:

The persons residing in Richmond and Robeson counties, supposed to be descendants of a friendly tribe once residing in the eastern portion of the State, known as Croatan Indians, and who have heretofore been known as "Croatan Indians," or "Indians of Robeson County," and their descendants, shall be known and designated as the "Cherokee Indians of Robeson County"; and the persons

residing in Person County supposed to be descendants of a friendly tribe of Indians and "White's Lost Colony," once residing in the eastern portion of this State, and known as "Cubans," and their descendants, shall be known and designated as the "Indians of Person County."

The Indians mentioned above and their descendants shall have separate schools for their children, school committees of their own race and color, and shall be allowed to select teachers of their own choice, subject to the same rules and regulations as are applicable to all teachers in the general school law, and there shall be excluded from such separate schools all children of the negro race to the fourth generation. The county superintendent in and for Robeson County shall keep in his office a record of schools for the Cherokee Indians of Robeson County, which said record shall disclose the operation of such schools, separate and apart from the record of the operation of schools for the other races. (1923, c. 136, s. 42; C. S., s. 5445; 1931, c. 141.)

Local Modification. — Pembroke State 195; 1941, c. 323, s. 1.

College for Indians, Robeson: 1929, c. **Cross Reference.**—See note to § 115-2.

ARTICLE 7.

Children at Orphanages.

§ 115-67. **Permitted to attend public schools.**—Children living in and cared for and supported by any institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the unit or district in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of the unit or district.

Provided, that the provisions of this section shall be permissive only, and shall not be mandatory. (1919, c. 301, s. 1; C. S., s. 5446; 1927, c. 163, s. 1.)

Editor's Note. — By Public Laws 1927, ch. 163, the provision for payment from an "equalizing fund" replaced a provision for payment from the State "public school fund." The last sentence making the section permissive and not mandatory was also added at this time. The section was revised in the General Statutes of North Carolina adopted by the General Assembly of 1943.

Failure of Purpose of Trust. — A trust fund created by will for the purpose of educating through high school a girl inmate

of an orphan asylum to be chosen by the board of trustees from time to time does not fall into the residuary clause for failure of the purpose of the trust on the ground that the State educated orphan children through high school without charge under the provisions of this section, since this section makes the payment for the education of the children in orphan asylums permissive only. *Humphrey v. Board of Trustees*, 203 N. C. 201, 165 S. E. 547 (1932).

§ 115-68. **After nine months, tuition fees may be charged.**—The board of trustees in special tax districts or city administrative units may charge such tuition fees as may be agreed upon between the authorities of said institution and the board of trustees for the attendance of such orphan children for the remainder of the school term, after the provision for nine months' school has been complied with. (1919, c. 301, s. 3; C. S., s. 5448; 1943, c. 255, s. 2.)

Editor's Note. — The 1943 amendment substituted "nine months" for "eight months."

ARTICLE 8.

Instruction of Illiterates—Adult Education.

§ 115-69. **Program of adult education provided.**—The State Board of Education is authorized to provide rules and regulations for establishing and conducting schools to teach adults, and the said schools when provided for shall become a part of the public school system of the State, and shall be conducted

under the supervision of the State Superintendent of Public Instruction. Appropriations made in the Budget Appropriations Act for the purpose of carrying out the provisions of this section shall be disbursed on vouchers issued by the State Superintendent of Public Instruction. (1937, c. 198, ss. 2, 3.)

ARTICLE 9.

Miscellaneous Provisions Regarding School Officials.

§ 115-70. Limitations of the board in selecting a county superintendent.—If any board shall elect a person to serve as superintendent of public instruction in a county or city administrative unit who does not qualify, or cannot qualify according to the provisions of the School Machinery Act, before taking the oath of office, the election is null and void, and it shall be the duty of the board of education to elect only a person that can qualify. (1923, c. 136, s. 44; C. S., s. 5453.)

Cross Reference. — As to qualifications superintendents of schools must meet, see § 115-353.

§ 115-71. Office and assistance for superintendent.—The county board of education shall provide an office for the county superintendent, at the county seat in the courthouse if possible. It shall provide office supplies for the superintendent, such as stationery, stamps and other necessary supplies in the conduct of his business. The county board of education may employ clerical assistance to aid the county superintendent. (1923, c. 136, s. 45; C. S., s. 5454.)

§ 115-72. Removal of superintendent for cause.—The county board of education or the board of trustees of a city administrative unit is authorized to remove a superintendent who is guilty of immoral or disreputable conduct, or shall fail or refuse to perform the duties required of him by law.

In case the State Superintendent shall have sufficient evidence at any time that any superintendent of public instruction is not capable of discharging or is not discharging the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall report the matter to the county board of education or the board of trustees of a city administrative unit which shall hear the evidence in the case; and, if, after careful investigation, it shall find the charges true, it shall declare the office vacant at once and proceed to elect his successor. This section shall not deprive any superintendent of the right to try his title to office in the courts of the State. (1923, c. 136, s. 46; C. S., s. 5455.)

§ 115-73. Prescribing duties of superintendent not in conflict with law and constitution.—All acts of the county board of education or the board of trustees of a city administrative unit not in conflict with State law shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board. (1923, c. 136, s. 47; C. S., s. 5456.)

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-74. Removal of committeemen for cause.—In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges, and shall remove such committeeman and appoint his successor if sufficient evidence shall be produced to warrant his removal and the best interests of the schools demand it. (1923, c. 136, s. 49; C. S., s. 5458.)

Committeeman May Be Removed Only for Cause.—A school committeeman for a district, although appointed by the county board of education, holds for a definite

term of two years and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

After Notice and Fair Hearing.—This section clearly contemplates that any school committeeman against whom the statutory proceeding for removal is brought shall be given notice of the proceeding, and of the charges against him, and afforded an opportunity to be heard and to produce testimony in his defense, and that the county board of education shall not remove him from his office unless it determines after a full and fair hearing on the merits that one or more of the specified causes for removal has been established by the evidence. *Russ v. Board*

of Education, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

Review of Board's Proceedings.—A proceeding for the removal of a school district committeeman under this section is judicial or quasi-judicial in character, and, there being no statutory provision for appeal, the procedure to obtain a review of the board's proceedings is by certiorari. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

Inconsistent Judgment.—Where a county board of education orders the removal of school committeemen under this section, judgment of superior court holding the act of the board invalid and also dismissing the appeal for want of jurisdiction is inconsistent and erroneous. *Board of Education v. Anderson*, 200 N. C. 57, 156 S. E. 153 (1930).

§ 115-75. Advising with the committee in regard to needs of district.—The county board of education shall advise with the committee of each district before the school budget is prepared, and seek such information as may be helpful in planning the work for the ensuing year, in providing the number and grade of teachers needed, and the amount needed to thoroughly equip the school building or buildings of the district. The county board of education shall keep the committees informed as to the plans and purposes of the board and shall seek in every way possible to secure their co-operation in providing adequate educational opportunities for all the children of the district, for the enforcement of the compulsory school law, for teaching adult illiterates, and for the encouragement of vocational education in the county. (1923, c. 136, s. 50; C. S., s. 5459.)

§ 115-76. Supervisors or assistant county superintendent.—The county board of education shall have authority to employ an assistant county superintendent or to employ a supervisor or supervisors to aid the county superintendent in supervising the instruction in the elementary and high schools of the county: Provided, that the salary for the same is provided in the budget and approved by the county commissioners. The duties of the supervisor or the assistant county superintendent shall be outlined by the county superintendent of public instruction: Provided further, the supervisor or assistant county superintendent shall not be assigned to regular clerical work in the office of the county superintendent. And no part of the salary of any supervisor or assistant county superintendent shall be paid out of the State public school fund, unless the duties assigned to the same are first approved by the State Superintendent of Public Instruction. (1923, c. 136, s. 51; C. S., s. 5460.)

§ 115-77. Authority of board over teachers, supervisors and principals.—The county board of education or the board of trustees of a city administrative unit upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals and supervisors, under jurisdiction of the county board of education or the board of trustees of a city administrative unit, the kind of reports they shall make and their duties in the care of school property.

The county board of education or the board of trustees of a city administrative unit shall have power to investigate and pass upon the moral character of any teacher or school official in the public schools of the unit, and to dismiss such teacher or school official, if found of bad moral character; also to investigate and pass upon the moral character of any applicant for employment in any public

school in the unit. Such investigation shall be made after written notice of not less than ten days to the person whose character is to be investigated.

If the superintendent reports to the board that the work of any teacher, principal or supervisor is unsatisfactory, or that either is not observing the rules and regulations of the board, the board has full authority at any time during the year, upon notice of ten days, to investigate the charges and, if sustained, to reduce the salary of the teacher, supervisor or principal to the next lower salary in the salary schedule, and finally to discharge the same for failure to perform the duties as prescribed by the board. (1923, c. 136, s. 53; C. S., s. 5461.)

Cited in *Coggins v. Board of Education*,
223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-78. Providing for training of teachers.—The county board of education or the board of trustees of a city administrative unit is authorized to provide for the professional growth of the teachers while in service, and to pass rules and regulations requiring teachers to co-operate with the superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1923, c. 136, s. 54; C. S., s. 5462.)

Cited in *Coggins v. Board of Education*,
223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-79. Pay of teachers.—The board of education or the board of trustees shall not authorize the payment of the salary of any teacher or school official for a shorter term than one month, unless he or she is providentially hindered from completing the term.

It is the duty of the board of education or the board of trustees to provide monthly for the prompt payment of all salaries due teachers and other school officials, and to meet other necessary operating expense. (1923, c. 136, s. 55; C. S., s. 5463.)

§ 115-80. Authority to borrow.—If the taxes for the current year are not collected when the salaries and other necessary operating expenses come due, and the money is not available for meeting the necessary expenses, it shall be the duty of the county board of commissioners to borrow against the amount approved in the budget and to issue short-term notes for the amounts so borrowed in accordance with the provisions of the County Finance Act and the Local Government Act. The interest on all such notes shall be provided by the commissioners in addition to the amount approved in the budget unless this item is specifically taken care of in the budget. But if the county board of education shall willfully create a debt that shall in any other way cause the expenses for the year to exceed the amount authorized in the budget, without the approval of the county commissioners, the indebtedness shall not be a valid obligation of the county, and the members of the board responsible for making the debt may be held liable for the same. (1923, c. 136, s. 56; C. S., s. 5464; 1927, c. 239, s. 18.)

Editor's Note.—The 1927 amendment changed the authority to borrow from the board of education to the board of commissioners.

See *Hampton v. Board of Education*,

195 N. C. 213, 141 S. E. 744 (1928), where it was held, under the facts and circumstances, that county commissioners were liable for a debt created under this section. See notes to § 115-19.

§ 115-81. Salary schedule for teachers.—Every county board of education or the board of trustees of a city administrative unit may adopt, as to teachers and school officials not paid out of State funds, a salary schedule similar to the standard salary schedule authorized by the School Machinery Act, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any county board of education or the board of trustees of any city administrative unit shall fail to adopt such a schedule, the State salary schedule

shall automatically be in force, and the difference in salaries suggested shall be maintained. From other than State funds, no teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the county board of education or of the board of trustees of the city administrative unit a higher salary is allowed for special fitness, special duties or under extraordinary circumstances. Whenever a higher salary is thus allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, the county board of education, upon the recommendation of the committee of a district may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1923, c. 136, s. 57; C. S., s. 5465.)

Cross Reference.—As to the State standard salary schedule, see § 115-359.

§ 115-82. **Salary warrants.**—All salary warrants for teachers, principals and other regular employees of county administrative units shall be issued only on the basis of written monthly certifications signed by the chairman and secretary of the district committee and filed with the county board of education; or in city administrative units, such certifications shall be signed by the chairman and secretary of the board of trustees. Such certification shall specify the length of service rendered by each person and the amount due and payable therefor, and shall specify that part of the total amount to be charged to State funds and that part to be charged to county, unit or district funds: Provided, that the county board of education or board of trustees of a city administrative unit, in case of dispute as to any claim, may in regular or called session finally determine the validity of said claim and order settlement thereof in accordance with their findings. Each warrant drawn in payment of any claim, including salaries or for any other purpose, shall specify the fund to which the warrant is chargeable. If any part of any warrant drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified. In the payment of salary warrants, the county board of education or board of trustees of a city administrative unit may require the teacher's report at the end of each month to be properly attested by the chairman and secretary of the local committee or of the board of trustees before issuing salary warrants: Provided, that the final report of membership and attendance from any district, whether by a teacher, principal, or superintendent, shall be subscribed and sworn to before an officer authorized to administer oaths by such teacher, principal or superintendent making said report, before the last warrant for salary or salaries in said district may be issued: and provided further, that the county superintendent or city superintendent of schools shall be authorized and directed to attest such signature and oath without fee or charge when so requested. (1923, c. 136, ss. 58, 197; C. S., s. 5466; 1927, c. 239, ss. 17, 20; 1931, c. 430, s. 17; 1939, c. 358, s. 20.)

Cross References. — As to how school funds shall be paid out in general, see § 115-368. As to State standard salary schedule, see § 115-359.

Editor's Note.—The act of 1927 changed this section to conform with the Budget

Act then in effect. The act of 1931 rewrote this section; and again it was completely revised in the General Statutes of North Carolina adopted by the 1943 General Assembly. See note to § 115-1.

ARTICLE 10.

Erection, Repair and Equipment of School Buildings.

§ 115-83. **Provision for school buildings and equipment.**—School buildings, properly lighted, and equipped with suitable desks for children and tables and chairs for teachers, are necessary in the maintenance of a nine months' school term.

It shall be the duty of the county boards of education, with respect to county administrative units, and the boards of trustees, with respect to city administrative units, to present these needs and the cost thereof each year to the county commissioners. The county commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing the respective units with buildings suitably equipped, and it shall be the duty of the county commissioners to provide the funds for the same. (1923, c. 136, s. 59; C. S., s. 5467; 1943, c. 255, s. 2.)

Editor's Note. — The 1943 amendment substituted the words "a nine" for the words "an eight" in the first sentence.

Expense a County-Wide Charge. — In accordance with the provisions of this section, it is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a county-wide charge. *Reeves v. Board of Education*, 204 N. C. 74, 167 S. E. 454 (1933).

County Commissioners to Determine What Expenditures Shall Be Made.—The board of commissioners of the county, and not the board of education is charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. *Johnson v. Marrow*, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings by the board of county commissioners, will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administra-

tive unit. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

All Expenditures Must Be Authorized.

--All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Commissioners May Reallocate Proceeds of Bond Issue.—A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation provided for in § 115-83, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949).

Cited in *Mears v. Board of Education*, 214 N. C. 89, 197 S. E. 752 (1938).

§ 115-84. Erection or repair of schoolhouses.—The building of all new schoolhouses and the repairing of all old schoolhouses over which the county board of education has jurisdiction shall be under the control and direction of and by contract with the county board of education, provided, however, that in the building of all new schoolhouses and the repairing of all old schoolhouses which may be located in a city administrative unit, the building of such new schoolhouses and the repairing of such old schoolhouses shall be under the control and direction of and by contract with the board of education or the board of trustees having jurisdiction over said city administrative unit. But the board shall not be authorized to invest any money in any new house that is not built in accordance with plans approved by the State Superintendent, nor for more money than is made available for its erection. All contracts for buildings shall be in writing, and all buildings shall be inspected, received, and approved by the county superintendent of public instruction, or by the superintendent of schools where such school buildings are located in a city administrative unit, before full payment is made therefor: Provided, this section shall not prohibit county boards of education and boards of trustees from having the janitor or any other regular employee to repair the buildings. From any moneys loaned by the State to any one of the several counties for the erection, repair or equipment of school buildings, teacherages and dormitories, the State Board of Education, under such rules as it may deem advisable, not inconsistent with the provisions of this arti-

cle, may retain an amount not to exceed fifteen per cent of said loan until such completed buildings, erected or repaired, in whole or in part, from such loan funds, shall have been approved by such agent as the State Board of Education may designate: Provided, that upon the proper approval of the completed building, the State Treasurer, upon requisition of the State Superintendent of Public Instruction, authorized and directed by the State Board of Education, shall pay to the treasurer of the county the remaining part of said loan, together with interest from the date of the loan at a rate not less than three per cent on monthly balances. (1923, c. 136, s. 60; C. S., s. 5468; 1925, c. 221; 1937, c. 353.)

Cross Reference.—As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Editor's Note.—The 1925 amendment added the last part of this section providing for holding and paying money loaned to counties for repair of school buildings, teacherages and dormitories.

The 1937 amendment inserted the proviso to the first sentence of this section. It also amended the third sentence by inserting the clause relating to superintendent of schools.

Power Discretionary.—The building of a school is a matter vested by the statute in the sound discretion of the county board of education and not to be restrained by the courts, unless in violation of some provision of law, see *Pickler v. County Board*, 149 N. C. 221, 62 S. E. 902 (1908), or unless the committee is influenced by improper motives, or there is misconduct on their part. See *Smith v. School Trustees*, 141 N. C. 160, 53 S. E. 524 (1906); *Venable v. School Committee*, 149 N. C. 120, 62 S. E. 902 (1908).

Whether a change should be made in

the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714 (1950).

Providing Electric Lights.—Under the general statutory authority of this article the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work are not within the meaning of this section and need not be in writing. Nor need they be approved by the State Superintendent. *Conrad v. Board*, 190 N. C. 389, 130 S. E. 53 (1925).

Cited in *Chapman-Hunt Co. v. Haywood County Board of Education*, 198 N. C. 111, 150 S. E. 713 (1929); *Mears v. Board of Education*, 214 N. C. 89, 197 S. E. 752 (1938).

§ 115-85. Acquisition of sites.—The county board of education or board of trustees of any city administrative unit may receive by gift or by purchase suitable sites for schoolhouses or other school buildings. But whenever any such board is unable to obtain a suitable site for a school or school building by gift or purchase, the board shall report to the county or city superintendent of public instruction, who shall, upon five days' notice to the owner or owners of the land, apply to the clerk of the superior court of the county in which the land is situated for the appointment of three appraisers, who shall lay off by metes and bounds not more than thirty acres, and shall assess the value thereof. They shall make a written report of their proceedings, to be signed by them, or by a majority of them, to the clerk, within five days of their appointment, who shall enter the same upon the records of the court. The appraisers and officers shall serve without compensation. If the report is confirmed by the clerk, the chairman and the secretary of the board shall issue an order on the treasurer of the county school fund or, if a city administrative unit, upon the treasurer of such unit, in favor of the owner of the land thus laid off, and upon the payment, or offer of payment, of this order, the title to such land shall vest in fee simple in the corporation. Any person aggrieved by the action of the appraisers, including the county board of education or the board of trustees of any city administrative unit, may appeal to the superior court in term, upon giving bond to secure the board against such costs as may be incurred on account of the appeal not being prosecuted with effect. If the lands sought to be condemned hereunder, or any part of said lands, shall be owned by a nonresident of the State, before the clerk shall appoint ap-

praisers therefor, notice to such nonresident owner shall be given of such proceedings to condemn, by publication once a week for thirty days in some newspaper published in the county, and if no newspaper is published in the county, then by posting such notice at the courthouse door and three other public places in the county for the period of thirty days: Provided, where sites have already been acquired and additional adjacent lands are necessary such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed thirty acres. (1923, c. 136, s. 61; C. S., s. 5469; 1924, c. 121, s. 1; 1929, c. 309, ss. 1, 2; 1951, c. 391; 1951, c. 1027, s. 1.)

Local Modification. — City of Greensboro: 1951, c. 707, s. 3.

Cross Reference.—As to exercising the power of eminent domain, see § 40-2.

Editor's Note.—By the 1924 amendment this section was made applicable to "board of trustees of any special charter district" where formerly it applied only to the county board of education. References to "special charter districts" in this section were changed to "city administrative units" to reflect the school plan as set forth in § 115-352. See note to § 115-1.

The first 1951 amendment substituted "thirty acres" for "ten acres" in the second and last sentences and the second 1951 amendment inserted the words "once a week" in the last sentence.

The General Assembly amended this section, in March, 1929, by providing that "where sites have already been acquired and additional adjacent lands are necessary, such additional lands may be acquired as in this section provided, which lands, together with the old site, shall not exceed ten acres." Whether the act of 1929 was merely declaratory of the law then existing, or whether it was intended to confer an additional power of condemnation is now wholly immaterial and academic. *Board of Education v. Pegram*, 197 N. C. 33, 147 S. E. 622 (1929).

Construing this section in connection with the former statutes giving the county board of education the power to condemn lands necessary for public school purposes within the limitation of ten (now thirty) acres, it is held, the fact that one of these schools had already acquired a less amount of land did not preclude the county board of education from acquiring by another proceeding sufficient lands to meet the enlarged and necessary requirements of the school for additional lands within the limitation imposed by statute. *Board of Education v. Pegram*, 197 N. C. 33, 147 S. E. 622 (1929).

The meaning of the word "site" as used in the statute is broad enough to embrace such land, not exceeding the statutory limit, as may reasonably be required for the suitable and convenient use of the particular building; and land taken for a play-

ground in conjunction with a school may be as essential as land taken for the schoolhouse itself. 24 R. C. L., 582. See *Board v. Forrest*, 190 N. C. 753, 130 S. E. 621 (1925), which presents an able review of the history of this section.

The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. *Atkins v. McAden*, 229 N. C. 752, 51 S. E. (2d) 484 (1949); *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950); *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714 (1950).

This section provides no limitation on the acreage which may be purchased or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed ten (now thirty) acres. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950).

High School and Elementary School on Adjoining Sites. — This section does not prohibit the location of a high school and an elementary school on adjoining sites. However, neither site may contain more than ten (now thirty) acres of land, if any part thereof must be obtained by condemnation. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of ten (now thirty) acres, since the board has the discretionary power to locate the schools on adjoining sites. *Wayne County Board of Education v. Lewis*, 231 N. C. 661, 58 S. E. (2d) 725 (1950).

§ 115-86. Sale of school property.—When in the opinion of the board, any schoolhouse, schoolhouse site or other public school property has become unnecessary for public school purposes, it may sell the same at public auction after advertising the said property for the period of time and in like manner as to places and publication in newspapers as now prescribed for sales of real estate under deeds of trust: Provided further, that the sale shall be reported to the office of the clerk of the superior court and remain open for ten (10) days for an increase bid, and if the said bid is increased the property shall be readvertised in the manner as resales under deeds of trust, and if there is no raised or increased bid within ten (10) days, the chairman and secretary of the board shall execute a deed to the purchaser, and the proceeds shall be paid to the treasurer of the county school fund. After the sale of school property, as herein provided for, has been had and in the opinion of the board the amount offered for the property, either at the first or any subsequent sale, is inadequate, then, upon a finding of such fact by the board, the said board is authorized to reject such bid and to sell the property at private sale: Provided, the price offered is in excess of that offered at such public sale. (1933, c. 494, s. 2; 1937, c. 117.)

Delegation of Authority.—Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in ex-

cess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into and a decree restraining the execution of the contract was proper. *Bowles v. Fayetteville Graded Schools*, 211 N. C. 36, 188 S. E. 615 (1936).

§ 115-87. Deeds to property.—All deeds to the county board of education or the board of trustees of a city administrative unit shall be registered and delivered to the clerk of the superior court for safekeeping, and the secretary of the said board shall keep an index, by townships and school districts, of all such deeds in a book for that purpose. (1923, c. 136, s. 63; C. S., s. 5471.)

§ 115-88. Board cannot erect or repair building unless site is owned by board.—The county board of education or the board of trustees of a city administrative unit shall make no contract for the erection or repair of any school building unless the site on which it is located is owned by the said board, and the deed for the same is properly registered and deposited with the clerk of the court. Provided, it shall be lawful for the county board of education to borrow from the State Literary or Special Building Funds for the benefit of city administrative units and to allocate the proceeds of the county school building bonds between city and county administrative unit schools in proportion to the respective needs of the city unit schools and the county unit schools at the time when such county bonds are authorized: Provided further, that the title to the site in any city administrative units so aided shall be vested in the board of trustees of the unit. (1923, c. 136, s. 64; C. S., s. 5472; 1925, c. 180, s. 1; 1933, c. 299; 1939, c. 358, s. 5.)

Editor's Note. — The 1925 amendment added the last two sentences. This section was revised in the General Statutes of North Carolina adopted by the General Assembly of 1943 so as to reflect the school plan as set out in § 115-352. See note to § 115-1.

Not Applicable to Electric Light Wires.

—This section does not apply to the erection of electric light wires. It applies only to sites for school buildings; it does not extend to or include the rights of way. *Conrad v. Board*, 190 N. C. 389, 130 S. E. 53 (1925).

Cited in *Hickory v. Catawba County*, 206 N. C. 165, 173 S. E. 56 (1934).

§ 115-89. Loans for building schoolhouses.—The county board of education may make loans for the erection of schoolhouses to local tax districts or city administrative units, but all such loans shall be made upon written petition of a majority of the committee of the local tax district or board of trustees of the city administrative unit, and said petition shall authorize the county board of education to deduct a sufficient amount from the local taxes or the county fund due said district or unit to meet the payments as they come due. If the loan is made without a written petition from the committee or the board of trustees, the county board of education shall have no lien upon the local taxes for the repayment of the loan. (1923, c. 136, s. 156; C. S., s. 5554.)

§ 115-90. Duty of board to keep buildings in repair.—It is the duty of the county board of education or the board of trustees of a city administrative unit to keep all school buildings in good repair, and to that end it should appoint a member of the committee or some other responsible person to care for the property during vacation. Such repairs shall be paid for as authorized by the School Machinery Act. All principals and teachers shall be held responsible for the safekeeping of buildings during the school session, and all breakage and damage shall be repaired by those responsible for the same, and if at the end of the session the building or buildings have not been properly cared for by the principal and teachers, the board of education or the board of trustees of a city administrative unit, upon the recommendation of the superintendent, may reserve enough of the salary belonging to the principal and teachers to repair the damage permitted through the carelessness of the principal and teachers: Provided, principal and teachers shall not be held responsible for damages that they could not have prevented by reasonable supervision in the performance of their duties. (1923, c. 136, s. 65; C. S., s. 5473.)

§ 115-91. Duty of board to provide equipment for school buildings.—It is the duty of the county board of education or the board of trustees of a city administrative unit to provide suitable supplies for school buildings under its jurisdiction, such as window shades, fuel, chalk, erasers, blackboards, and other necessary supplies, and to provide public schools with reference books, library, maps and equipment for teaching science, and the teachers and principal shall be held responsible for the proper care of the same during the school term. (1923, c. 136, s. 66; C. S., s. 5474; 1945, c. 970, s. 2.)

Cross Reference. — As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Editor's Note. — The 1945 amendment substituted "public schools" for "standard

high schools" immediately preceding the words "with reference books."

Cited in Board of Education v. Walter, 198 N. C. 325, 151 S. E. 718 (1930).

§ 115-92. Sanitary school privies.—The county board of education shall provide upon recommendation of the State Board of Health, two sanitary privies at each public school not having adequate water-carried sewerage facilities, one for boys and one for girls. Sanitary privies shall be considered an essential and necessary part of the equipment of each public school, and may be paid for in the same manner as desks and other essential equipment of the school are paid for, and a failure on the part of the county board of education and county superintendent to make provision for sanitary privies, or a failure on the part of the county commissioners to provide the funds, shall be considered a misdemeanor, and either the county board, the county superintendent, or the county commissioners may be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 68; C. S., s. 5475.)

Specific or special legislative authority is given the county by this section to issue without a vote bonds for sanitary improvements for its schoolhouses necessary for it

to maintain, as an administrative unit of the State, the constitutional school term in the county. Taylor v. Board of Education, 206 N. C. 263, 173 S. E. 608 (1934).

§ 115-93. **Type of privies to be installed.**—The less expensive pit-type as recommended by the State Board of Health may be installed in rural districts in connection with the smaller school buildings. But the kind of privy in all buildings shall be sufficient to protect the health and sanitation of the children and the community. (1923, c. 136, s. 69; C. S., s. 5476.)

§ 115-94. **Privies to be kept sanitary.**—The county board of education shall require of the district committee that the privies shall be kept in a sanitary condition. They shall be governed in this particular by rules and regulations of the State Board of Health. And the county board of education shall provide a reasonable expense fund wherever necessary to keep the privies in a sanitary condition. Failure of the committeemen to keep privies at public schoolhouses in proper sanitary condition or a failure to notify the county board of education of their unsanitary condition shall be considered a misdemeanor and shall subject them severally and personally to fine and imprisonment, or both, in the discretion of the court.

It shall be the duty of the teachers and principals to report the unsanitary condition of the privies to the committee of the district, or the county superintendent. (1923, c. 136, ss. 70, 141; C. S., s. 5477.)

§ 115-95. **Use of school property.**—It shall be the duty of the county boards of education, as to county administrative units, and the boards of trustees, as to city administrative units, to encourage the use of the school buildings for civic or community meetings of all kinds that may be beneficial to the members of the community. The State Board of Education, and the county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other than school purposes. (1923, c. 136, s. 71; C. S., s. 5478; 1939, c. 358, s. 9; 1943, c. 721, s. 8.)

Editor's Note.—The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-96. **Providing good water supply.**—It is the duty of the school committeemen to see that the schools have good water supply, and wherever a school is without a good water supply it is the duty of the committee to report the condition to the county superintendent before and even after the opening of school, and it shall be the duty of the county superintendent to present the need to the county board of education, and it shall be the duty of the county board of education to make such provision as will give the teachers and children a good supply of wholesome water. (1923, c. 136, s. 142; C. S., s. 5544.)

ARTICLE 11.

Creating and Consolidating School Districts.

§ 115-97. **School districts.**—The State Board of Education, with the advice of the county board of education shall maintain in each county a convenient number of school districts.

There may be one district and one school committee for both races, or the races may have separate districts and separate school committees. The State Board of Education, with the advice of the county board of education shall consult the convenience and necessities of each race in fixing the boundary lines of school districts for each race, and it shall be the duty of the county board of education to record, in a book kept for the purpose, the location of each school district and the boundary lines of each. (1923, c. 136, s. 73; C. S., s. 5480; 1943, c. 721, s. 8.)

Cross Reference.—As to limitation on school districts, see Art. II, § 29 of the power of legislature to change lines of Constitution.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

This Article Is Constitutional.—Sparkman v. Board, 187 N. C. 241, 121 S. E. 531 (1924), cited and approved in Blue v. Board, 187 N. C. 431, 122 S. E. 19 (1924).

When Court Will Intervene. — The courts will not interfere with the control and supervision of the county board of education in the exercise of its statutory

discretion given in the formation of school districts and their consolidation, or intervene in behalf of any one who supposes himself to be aggrieved by their action therein, except upon a clear showing that it was acting contrary to law, and then they will only restrain its action to the extent necessary to keep it within the law and the rightful exercise of its powers. Davenport v. Board, 183 N. C. 570, 112 S. E. 246 (1922).

§ 115-98. Districts formed of portions of contiguous counties.— School districts may be formed out of portions of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education. In case of the formation of such district, the pro rata part of the public school money due for teaching the children residing in one county shall be apportioned by the county board of education of that county, and paid to the treasurer of the other county in which the school-house is located, to be placed to the credit of the school district so formed.

In case of a disagreement between the two county boards as to the pro rata part due the county in which the school is located, the evidence shall be laid before the State Board of Education, which shall determine from the evidence submitted and from the approved budget for that school, on file in its office, the amount due, and the pro rata part of each county shall be certified to the county board of education of each county, and the county board of education of the county in which the joint school is located may recover by due process of law from the county board of education in the other county the amount due the joint school for the school term from that county. (1923, c. 136, s. 74; C. S., s. 5482; 1943, c. 721, s. 8.)

Cross Reference. — As to the general control of school districting, see § 115-352.

substituted "State Board of Education" for "State School Commission."

Editor's Note. — The 1943 amendment

§ 115-99. Consolidation of schools or school districts.—The county board of education is hereby authorized and empowered to consolidate schools located in the same district, and, with the approval of the State Board of Education, to consolidate school districts, over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school in the consolidated district. (1923, c. 136, s. 75; C. S., s. 5483; 1943, c. 721, s. 8.)

Cross References.—See note to § 115-1. As to the general control of locating schools and school districts, see § 115-352. See also, § 115-192.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

Consolidation of Tax and Nontax Districts. — It is not necessary to the valid consolidation of nonspecial school tax districts with special school tax districts that it be approved by the voters of the nonspecial school tax districts, when the questions of taxation and bond issues are not involved, and especially so when the consolidation has been made according to the

provisions of a Public-Local Law applicable to the county wherein the consolidation has been made. Board v. Bray Bros. Co., 184 N. C. 484, 115 S. E. 47 (1922).

Special school tax districts, organized and exercising governmental functions in the administration of the school laws, are quasi-public corporations subject to the constitutional provisions in restraint of contracting debts for other than necessary purposes, except by the vote of the people of a given district, Const., Art. VII, § 7; and semble, that where an existent tax and nontax district are thereunder consolidated, it would require the submission of the question to those living within the dis-

trict thus formed, but outside of the district that has theretofore voted the tax as provided in § 115-192 for enlargement of local tax districts. *Paschal v. Johnson*, 183 N. C. 129, 110 S. E. 841 (1922); *Barnes v. Leonard*, 184 N. C. 325, 114 S. E. 398 (1922).

The authority given the county board of education to redistrict the entire county or part thereof, and to consolidate school districts, etc., was amended by Public Laws of 1921, ch. 179, providing, among other things, for such consolidation of existing districts under a uniform rate of taxation not exceeding the lowest in any one district, meets the requirements of our Constitution, Art. VII, § 7, but to the extent the amendatory statute permits consolidation of local school tax districts with adjacent territory or local schools that have never voted any tax, the provisions of § 115-192, must apply so as to permit those living in such proposed new territory to vote separately upon the question of taxing themselves for the purpose. *Perry v. Commissioners*, 183 N. C. 387, 112 S. E. 6 (1922).

Issuance of Bonds. — Where there has been a valid consolidation of local-tax school districts, having an equal tax rate for the purpose, by proper proceedings under the statute the new district may then approve the question of an additional special tax, and where this has been done under the authority of a valid statute, and an issue of bonds properly approved by the voters, such bonds are constitutional and valid. *Paschal v. Johnson*, 183 N. C. 129, 110 S. E. 841 (1922).

§ 115-100. Transferring families from nonlocal tax to local tax or city administrative units.—The county board of education, with the approval of the State Board of Education, may transfer from nonlocal tax territory to local tax districts or city administrative units, an individual family or individual families who reside on real property contiguous to said local tax districts or city administrative units, upon written petition of the taxpayers of said family or families, and there shall be levied upon the property and poll of each individual so transferred the same tax as is levied upon other property and polls of said district or unit: Provided, however, that any transfer to a city administrative unit shall be subject to the approval of the board of trustees. (1923, c. 136, s. 78; C. S., s. 5486; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-101. School trucks and automobiles exempt from taxation; registration.—All trucks or automobiles owned or controlled by the county board of education and used for transporting pupils to school or used by school nurses or home and farm demonstration agents, or county superintendents and supervisors, in the prosecution of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Department of Motor Vehicles: Provided, that the Department of Motor Vehicles, upon proper proof being filed

Authority Discretionary. — Ordinarily the courts will not interfere with the discretionary authority of the county board of education to select school sites and consolidate schools of a district, and, with the approval of the State Board of Education, to consolidate school districts. *Gore v. Columbus County*, 232 N. C. 636, 61 S. E. (2d) 890 (1950).

Reallocation of Funds from Bond Issue. —The bond order and the advertised statement of the purpose for which funds from a proposed school bond issue were to be used stipulated, inter alia, improvements in the elementary school of one district by the addition of eight classrooms, and improvements in the elementary and high school of another district. Thereafter the county board of education, on the basis of a survey, proposed to use the entire funds allocated for such improvements for the erection of a new high school building for the use of both schools. It was held that the county board of education has no power to reallocate the funds for the erection of the new high school in the absence of a finding in good faith that the erection of such new high school would so relieve the pupil load on the elementary schools that the use of the funds for the improvement and enlargement of the elementary schools would no longer be necessary because of changed condition. *Gore v. Columbus County*, 232 N. C. 636, 61 S. E. (2d) 890 (1950).

Quoted in *Feezor v. Siceloff*, 232 N. C. 563, 61 S. E. (2d) 714 (1950).

with it that any motor vehicle for which license is herein required is owned by the State or any department thereof or by any county, township, city or town, or by any board of education, may collect not exceeding one dollar for the registration and numbering of such motor vehicle. (1923, c. 136, s. 82; C. S., s. 5490.)

SUBCHAPTER IV. COUNTY SUPERINTENDENTS' POWERS, DUTIES AND RESPONSIBILITIES.

ARTICLE 12.

General Duties.

§ 115-102. **Not to teach; to reside in county.**—Every county superintendent shall reside in the county of which he is superintendent. It shall not be lawful for him to teach a school while the public schools of his county are in session, nor shall he be regularly employed in any other capacity that may limit or interfere with his duties as superintendent except as authorized by § 115-353. (1923, c. 136, s. 86; C. S., s. 5494.)

Cross Reference.—As to salary, election and qualification of county superintendent, see § 115-353.

§ 115-103. **Oath of office.**—The county superintendent of public instruction, before entering upon the duties of office, shall take oath for the faithful performance thereof. (1923, c. 136, s. 87; C. S., s. 5495.)

§ 115-104. **Vacancies in office of county or city superintendent.**—In case of vacancy by death, resignation, or otherwise, in the office of county superintendent, such vacancy shall be filled by the county board of education. In case of like vacancy in the office of city superintendent such vacancy shall be filled by the city board of trustees, or other school governing body, of a city administrative unit. During the time any county or city superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for under G. S. 115-353. In case such position is not filled immediately on a permanent or temporary basis or in case of absence of a superintendent on account of illness or other approved reason, the respective boards by resolution duly adopted and recorded in the minutes of such board may assign to an employee of such school board, with the approval of the State school authorities, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1923, c. 136, s. 88; C. S., s. 5496; 1951, c. 1027, s. 2.)

Editor's Note. — The 1951 amendment added all of the section following the first sentence.

§ 115-105. **Secretary to county board.**—The county superintendent shall be ex officio the secretary of the county board of education. He shall record all proceedings of the board, issue all notices and orders that may be made by the board pertaining to the public schools, schoolhouses, sites, or districts (which notices or orders it shall be the duty of the secretary to serve by mail or by personal delivery, without cost). He shall also record all school statistics. The records of the board and the county superintendent shall be kept in the office provided for that purpose by the board. (1923, c. 136, s. 89; C. S., s. 5497.)

§ 115-106. **Report on condition of school buildings.**—It shall be the duty of the county superintendent to inspect all school buildings or have them thoroughly inspected before the opening of school, and report their condition to the committee and to the county board of education, with such recommendations as will make them comfortable and sanitary. (1923, c. 136, s. 93; C. S., s. 5500.)

§ 115-107. **Attending meetings of State and district associations of superintendents.**—Unless providentially hindered, the county superintendent shall attend continuously during its session the annual meeting of the State association of county superintendents and the annual meeting of the district association of county superintendents, and the county board of education of his county shall pay out of the county school fund his traveling expenses including board while in attendance upon such meeting. (1923, c. 136, s. 94; C. S., s. 5501.)

§ 115-108. **Reports to State Superintendent.**—The county superintendent shall make such reports to the State Superintendent as are required by law. The State Superintendent of Public Instruction shall have authority to call on the county superintendent for school statistics and for reports on any phase of the school work or school conditions of the county, and it shall be the duty of the county superintendent to supply the information promptly and accurately. (1923, c. 136, s. 95; C. S., s. 5502.)

ARTICLE 13.

Duty of County Superintendent Toward Committeemen, Teachers and Principals.

§ 115-109. **Notifying committeemen of their duties.**—The county superintendent shall notify committees of the rules and regulations of the county board of education and their duties in the school district. He shall notify the committees, before the opening of the school, of the appropriation for teachers' salaries, incidental and building funds, the amount of any local tax supplement funds due each district, the salary schedule in force in the county, the law governing the payment of all district funds, the duties of the committeemen in the care and use of school buildings, and all other duties that may be helpful in conducting the school in each district. (1923, c. 136, s. 97; C. S., s. 5503.)

§ 115-110. **Distributing blanks and books.**—It shall be the duty of the county superintendent to distribute to the various school committees and to teachers of his county all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent of Public Instruction, who shall give instruction for proper use of same. (1923, c. 136, s. 98; C. S., s. 5504.)

§ 115-111. **Keeping record of all teachers.**—The county superintendent shall keep a record of all teachers employed in the county, the kind of certificate held by each teacher, the length of service, success as a teacher, and the salary allowed. (1923, c. 136, s. 100; C. S., s. 5506.)

§ 115-112. **Approving selection of all teachers.**—No election of a principal, supervisor, teacher, assistant, or supply teacher shall be deemed valid until such election has been approved by the county superintendent and county board of education. No teacher shall be employed by a committee or approved by a county superintendent who is under eighteen years of age. And no superintendent shall approve the selection of any teacher or principal for a given school year who has willfully broken his or her written contract with some other superintendent for that year: Provided, a teacher shall have the right to resign her position after giving thirty days' notice: Provided further, the superintendent shall not approve the selection of a teacher holding a second or third grade cer-

tificate unless it is impracticable to secure a resident teacher who holds a higher certificate. (1923, c. 136, s. 101; C. S., s. 5507; 1939, c. 358, s. 7.)

Cross References.—As to the election of notice given teacher whose application is teachers, see § 115-354. As to notice of rejected, see § 115-359. resignation, see also, § 115-359. As to

§ 115-113. **Administering oaths to teachers.**—The county superintendent shall have authority to administer oaths to teachers and all subordinate school officials when an oath is required of the same. (1923, c. 136, s. 103; C. S., s. 5509.)

§ 115-114. **Advising with teachers, principals and supervisors.**—The county superintendent shall advise with teachers, principals, and supervisors as to the best methods of instruction, school organization and school government, and to that end he shall keep himself informed as to the progress of education, both in his own county and in other counties, cities, and states. And teachers, principals, and supervisors shall co-operate with him in putting into use the best methods of instruction, school organization and school government. (1923, c. 136, s. 104; C. S., s. 5510.)

§ 115-115. **Visiting schools.**—The county superintendent shall be required to visit each public school of his county at least twice while the schools are in session. He shall inspect school buildings and grounds in order to advise committeemen and the county board of education as to the physical needs of the school, and he shall inform himself of the condition and needs of the several districts of his county. (1923, c. 136, s. 105; C. S., s. 5511.)

§ 115-116. **Holding teachers' meetings.**—The county superintendent shall hold each year such teachers' meetings as in his judgment will improve the efficiency of the instruction in school. He may, with the co-operation of the supervisors or principals, outline reading courses for teachers and organize the teachers into special study groups.

If a superintendent shall fail to advise with his teachers and to provide for the professional growth of his teachers while in service, the State Superintendent shall notify the county board of education, and, after due notice, if he shall fail to perform his duties in this respect, either the county board of education may remove him from office or the State Board of Education may revoke his certificate. (1923, c. 136, s. 106; C. S., s. 5512; 1947, c. 1077, s. 5.)

Editor's Note. — The 1947 amendment set apart for this purpose" formerly ap- struck out the words "and, if necessary, pearing at the end of the first paragraph. not exceeding three school days may be

§ 115-117. **May suspend teachers.**—The county superintendent shall have authority to suspend any teacher who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall willfully refuse to co-operate in teachers' meetings: Provided, any teacher who may be suspended by the superintendent may have the right to appeal either to the county board of education or to the courts. (1923, c. 136, s. 107; C. S., s. 5513.)

§ 115-118. **Illegal to keep teacher in service without a certificate.**—It shall be unlawful for any board of trustees or school committee that receives any public school money from the county, State, or district, to keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent who does not hold a certificate in compliance with law.

The county or city school superintendent or other officials are forbidden to approve any voucher for salary of any person kept in service in violation of the provisions of this section, and the treasurer of the county, or city schools is hereby forbidden to pay out of school funds the salary of any such person: Provided,

that nothing herein shall prevent the employment of temporary substitutes or emergency teachers under such rules as the county board of education may prescribe. (1923, c. 136, s. 110; C. S., s. 5515.)

§ 115-119. Contracts with teachers.—No contract entered into between a school committee or board of trustees and a teacher shall be valid until the contract is approved and signed by the superintendent. The contract shall show the salary allowed and such rules and regulations governing teachers in school as the county board of education or board of trustees may direct. No voucher for the salary of a teacher shall be signed by the superintendent unless a copy of the contract has been filed with him. (1923, c. 136, s. 111; C. S., s. 5516.)

Cross Reference. — As to the State standard salary schedule, see § 115-359.

When Contract Binding. — When the board of trustees of a school district recommends public school teachers for the ensuing term of schools to the county superintendent of education, his contracts with teachers so recommended, made in accordance with the provisions of the statute relating thereto, become a binding obligation upon the county commissioners when approved by them, and are in conformity with the budget of the county board of education, or when they are later approved by the county board of commissioners under the provisions of the

statute. *Hampton v. Board of Education*, 195 N. C. 213, 141 S. E. 744 (1928).

When there is one month for which the teachers of a school district have not been paid in accordance with their contracts of employment, and from the sum total of the approved budget of the board of education there remains a sufficiency to pay them, the board of county commissioners is liable for its payment, the statute not requiring the approval of the county commissioners for each separate item of the school budget. *Hampton v. Board of Education*, 195 N. C. 213, 141 S. E. 744 (1928).

§ 115-120. How teachers shall be paid.—When a teacher is properly elected and the contract has been properly signed and deposited as required by law, vouchers shall be written each school month by the superintendent, signed in accordance with law, and delivered to teachers, principals, and other employees. It shall be the duty of the board of education or the board of trustees to provide the funds for the prompt payment of teachers' salaries.

In all union schools the principal of the school may present monthly pay rolls in duplicate of all teachers, signed by two members of the committee. The superintendent may use this pay roll as his authority for issuing vouchers for the salary of each teacher: Provided, the county superintendent shall keep in his office a duplicate of the pay roll approved by him. (1923, c. 136, s. 112; C. S., s. 5517.)

Approval of vouchers. — Mandamus is the proper action to compel a superintendent to approve a teacher's voucher. The claim is not a money demand. If there are any reasons why the vouchers should

not be signed they are matters to be heard by the court, but the signing by the superintendent is a mere ministerial duty. *Ducker v. Venable*, 126 N. C. 447, 35 S. E. 818 (1900).

§ 115-121. When superintendent may withhold pay of teachers.—The chairman and secretary of the county board of education, or of the board of trustees of a city administrative unit may refuse to sign the salary voucher for the pay of any teacher, supervisor or principal who delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law the vouchers shall be signed and the teachers paid. (1923, c. 136, s. 113; C. S., s. 5518.)

§ 115-122. Schools required to report.—All teachers and principals shall be required to make to the superintendent of the administrative unit in which employed such reports as the governing board of the unit may direct: Provided that when such reports are for the State Superintendent of Public Instruction a copy of each shall be made for the county or city superintendent, as the case may be. All superintendents of county and city administrative units shall make

such reports to the State Superintendent of Public Instruction as are required by him. (1923, c. 136, s. 114; C. S., s. 5519.)

§ 115-123. **Reporting defective children.**—It shall be the duty of the superintendent to report through proper legal channels the names and addresses of parents, guardians or custodians of deaf, dumb, blind, and feeble-minded children to the principal of the institution provided for each, and upon the failure of the county superintendent to make such reports he shall be fined five dollars for each child of the class mentioned above not so reported. (1923, c. 136, s. 117; C. S., s. 5520.)

ARTICLE 14.

Duty of County Superintendent in Regard to School Funds.

§ 115-124. **Duty in preparing school budgets.**—The county superintendent shall keep the records of his office in such detail and in such an orderly way that the information for the budgets required by law may be prepared promptly, and he shall see that the budgets are prepared promptly and accurately, and he shall keep the records in his office so that any county official or citizen of the county may, upon request, see what the school in each district is costing, and what the total cost is to the county. It shall be his duty to sign all budgets and to take oath that the information contained therein is correct. (1923, c. 136, s. 118; C. S., s. 5521.)

Cross Reference.—As to local budgets generally, see § 115-363.

§ 115-125. **Duty to keep complete record of finances.**—The county superintendent shall keep in his office a complete record of the school finances of the county, what is appropriated to each district, and the division of the funds between the county and the city administrative units, the amount of loans from State and dates of payment, the amount of bond issues in each district, the rate of interest, date of payment, and he shall so keep his records that the school accounts may be audited with the least expense to insure a complete audit in accordance with law, and if he shall fail to keep the records of the acts of the county board of education so that they may be audited in accordance with law, the county board of education may remove him from office. (1923, c. 136, s. 119; C. S., s. 5522.)

§ 115-126. **Record of local taxes.**—The county superintendent shall keep in his office a record of all taxing districts in his county, the boundaries of each, the number of taxable polls, and the valuation of the taxable property and the special tax rate voted and levied for schools. On or before September first of each year he shall supply the county treasurer with a complete list of all such districts, and the estimated amount of tax to be collected in each district.

The treasurer shall keep a separate account of each such district, and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the lawful expenses of such district to which the funds collected belong. And no funds derived from local or special taxes shall be paid out by the treasurer except as provided in § 115-368, and if the treasurer shall fail to perform his duties as outlined in this section, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 120; C. S., s. 5523.)

§ 115-127. **Record of fines, forfeitures, and penalties.**—It shall be the duty of the county superintendent to keep a record of all fines, forfeitures and penalties due the school fund, and to this end all county officials that in any way handle such funds shall on demand report the same to the county superintendent; and he shall see that these funds are deposited with the treasurer and placed to the credit of the school fund. (1923, c. 136, s. 121; C. S., s. 5524.)

§ 115-128. **Disbursement of funds.**—It is the duty of the county superintendent to approve and sign all vouchers for the disbursement of all district funds except the funds belonging to city administrative units. And the treasurer shall honor no voucher that is not first approved and signed by the county superintendent or the secretary of the board of education. And no order shall be signed by the county superintendent or the secretary of the board for more money than is apportioned to and raised by local or special taxes in that district for the fiscal year. Nor shall he endorse the order of any teacher who does not produce a certificate as required by law, nor for more money than the salary schedule in force in the county would entitle the teacher to receive.

It shall be the duty of the county superintendent or the secretary of the board to sign all vouchers issued by order of the county board of education and signed by the chairman of the board, and no voucher shall be paid by the treasurer that is not properly signed. (1923, c. 136, s. 122; C. S., s. 5525.)

Cross Reference. — As to how school funds shall be paid out, see § 115-368.

When Treasurer's Duty to Honor.—The treasurer of the school fund cannot pay out any of the money coming into his hands as such except upon the order of the secretary of the county board of education and approved by the county superintendent. See *County Board v. County of Wake*, 167 N. C. 114, 83 S. E. 257 (1914).

§ 115-129. **City superintendent, powers, duties and responsibilities.**—All the powers, duties and responsibilities imposed by this subchapter upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units.

SUBCHAPTER V. SCHOOL COMMITTEES—THEIR DUTIES AND POWERS.

ARTICLE 15.

In Nonlocal Tax Districts.

§ 115-130. **Eligibility.**—Each school committeeman shall be a person of intelligence, of good moral character, and of good business qualifications, and known to be in favor of public education.

In all Indian schools authorized by law the committeemen may be selected from Indians residing in the district. (1923, c. 136, s. 125; C. S., s. 5528.)

Cross Reference. — As to the election term of office, and certain duties, see § of school committeemen, their number, 115-354.

§ 115-131. **Oath of office.**—Each school committeeman before entering on the duties of office shall take oath for the faithful performance thereof, and this oath may be taken before the county superintendent. (1923, c. 136, s. 126; C. S., s. 5529.)

§ 115-132. **Committeemen cannot teach.**—No person while serving as a member of any district committee shall be eligible to be elected as a teacher of any public school, or as a member of the county board of education, and should such person be elected to teach in any public school or private school receiving public funds or as a member of the county board of education before resigning as a member of the district committee, said election is hereby declared null and void. (1923, c. 136, s. 128; C. S., s. 5531.)

§ 115-133. **Organization of committee.**—The school committee, at their first meeting after the membership has been completed by the county board of

education, shall elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county superintendent and recorded by him. (1923, c. 136, s. 129; C. S., s. 5532.)

§ 115-134. How to employ teachers.—The school committee shall meet at a convenient time and place for the purpose of electing teachers and no teacher shall be employed by any committee except at regularly called meetings of such committee. No election of any teacher or assistant teacher shall be deemed valid until such election has been approved by the county superintendent and county board of education, and no contract for teachers' salaries shall be made during any year to extend beyond the term of a majority of the committee, nor for more money than accrues to the credit of the district for the fiscal year during which the contract is made. (1923, c. 136, s. 130; C. S., s. 5533; 1939, c. 358, s. 7.)

Cross Reference.—As to election of teachers by school committeemen, see also, § 115-354.

Personal Liability of Committeeman.—In *Robinson v. Howard*, 84 N. C. 152 (1881), it was held that a school committeeman was not liable personally on a contract by which he employed a teacher, and that the remedy was by mandamus to compel the payment of the money by the proper officer in the way provided by law. If, though the act is wrongful and malicious, an action will lie against the officer in his personal capacity to recover damages for the wrong committed by him. *Spruill v. Davenport*, 178 N. C. 364, 100 S. E. 527 (1919).

Evidence.—Under the provisions of this section, refusal of the county superintendent to approve the election of a teacher on the ground that he did not have sufficiently high certificates as a teacher and that his election as a teacher would not be for the best interests of the school will not sustain the finding of the trial judge that the refusal of the county superintendent of schools to approve the election was arbitrary, captious and without just cause, and a mandamus to cause his approval is improvidently issued by the lower court. *Cody v. Barrett*, 200 N. C. 43, 156 S. E. 146 (1930).

Cited in *Hampton v. Board of Education*, 195 N. C. 213, 141 S. E. 744 (1928).

§ 115-135. Power to contract with private schools.—In any school district where there may be a private school regularly conducted for at least six months in the year, unless it is a sectarian or denominational school, the school committee with the approval of the county superintendent may contract with the teacher of such private school to give instruction to all pupils of the district between the ages of six and twenty-one years in the branches of learning taught in the public schools, as prescribed by law, without charge to pupils and free of tuition. The amount paid such private school for each pupil in the public school branches, based on the average daily attendance, shall not exceed the regular tuition rates in such school for branches of study. (1923, c. 136, s. 135; C. S., s. 5537.)

§ 115-136. Powers as to school property.—The school committee shall be entrusted with the care and custody of all schoolhouses, schoolhouse sites, grounds, books, apparatus, or other school property in the district, with full power to control same, as they may deem best for the interest of the public schools and the cause of education, not in conflict with the rules and regulations governing school property adopted by the county board of education: Provided, if the committee is unable or shall fail to take due care of the schoolhouse and to protect all property belonging to it, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1923, c. 136, s. 136; C. S., s. 5538.)

Cited in *Wiggins v. Board of Education*, 198 N. C. 301, 151 S. E. 730 (1930).

§ 115-137. Reports to board.—The school committee shall make such reports to the county board of education as the board may deem necessary. (1923, c. 136, s. 138; C. S., s. 5540.)

§ 115-138. **Superintendent and committee to keep records of receipts, expenditures and contracts.**—The county superintendent shall keep by districts an itemized statement of all moneys apportioned to such district, the amount received and expended by each committee for each school, and a copy of all contracts made by them with teachers. It is the duty also of the committee to keep up with the funds of the district. It should know what the budget for the district contains, in order to know how much money is available and how it is spent. It is their duty to know the salary schedule and the limitations placed on committeemen in making contracts with teachers. It is illegal for committeemen to employ teachers at a salary higher than that contained in the authorized salary schedule; therefore, when the school budget is submitted it is the duty of each committeeman to examine it carefully to see how much money is allowed for teachers' salaries, and how many and what grade of teachers may be employed with the money allowed in the budget. (1923, c. 136, s. 139; C. S., s. 5541.)

Cross References.—As to local budgets, see § 115-363. As to State standard salary schedule, see § 115-359.

§ 115-139. **Obeying orders of sanitary committee or board of health.**—It shall be the duty of teachers, principals, superintendent, committee, and all other governing boards having authority over the maintenance, support, and conduct of a public school to obey the rules and regulations of the sanitary committee or board of health for the protection of health in the district. (1923, c. 136, s. 143; C. S., s. 5545.)

SUBCHAPTER VI. TEACHERS AND PRINCIPALS.

ARTICLE 16.

Their Powers, Duties and Responsibilities.

§ 115-140. **Health certificate required for teachers and other school personnel.**—Any person serving as county superintendent, city superintendent, principal, teacher, or any other employee in the public schools of the State, shall file in the office of the county or city superintendent each year, before assuming his or her duties, a certificate from the county physician, health officer, or other reputable physician, certifying that the said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his or her duties.

The examining physician shall make the aforesaid certificate on an examination form supplied by the State Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the State Superintendent of Public Instruction, with the approval of the State health officer, and such rules and regulations may include the requirement of an X-ray chest examination.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court.

It shall be the duty of the county or city superintendent of the school in which the person is employed to enforce the provisions of this section. (1923, c. 136, s. 159; C. S., s. 5556; 1947, c. 387.)

Editor's Note. — The 1947 amendment rewrote this section.

§ 115-141. **How to apply for a position.**—It is the duty of teachers, in making application for a position to teach, first to file the application with the

superintendent, stating the kind and the number of the certificate held, when the certificate expires, experience in teaching, the position last held, and a statement that the applicant has no contagious disease. The application should also state that the applicant, if elected, will not break the contract, without the approval of the superintendent who approved the contract, without giving at least thirty days' notice, and that he or she will observe the rules and regulations adopted by the board of trustees or the county board of education under whose jurisdiction he or she is employed to teach. (1923, c. 136, s. 160; C. S., s. 5557.)

§ 115-142. When teacher may annul contract.—The teacher may, after entering into a written contract, annul the contract by giving the superintendent a written notice of at least thirty days, and the superintendent shall pay for the full time the teacher has taught: Provided, the teacher has taught as much as twenty days. But if the teacher breaks the contract without giving thirty days' notice, it shall be the duty of the superintendent to report the name of the teacher to the State Superintendent, and the certificate held may either be revoked or reduced to the next lower grade. And no other superintendent shall employ or recommend for employment in any year a teacher who has broken his or her contract for that year; and no teacher who has willfully broken his or her written contract can again legally be elected for that year. This section shall also apply alike to principals and supervisors. (1923, c. 136, ss. 161, 162; C. S., s. 5558.)

Cross Reference.—As to penalty for failing to give proper notice of resignation, see also, § 115-359.

§ 115-143. How teachers may be dismissed.—The school committee of a district or board of trustees of a city administrative unit, with the approval of the superintendent, may dismiss a teacher for immoral or disreputable conduct in the community or for failure to comply with the provisions of the contract. The superintendent, with the approval of the committee or the board of trustees, has authority, and it is his duty, to dismiss a teacher who may prove himself or herself incompetent or may willfully refuse to discharge the duties of a public school teacher, or who may be persistently neglectful of such duties. But no teacher shall be dismissed until charges have been filed in writing in the office of the superintendent. The superintendent shall give the teacher at least five days' notice, in which time he or she shall have the opportunity to appear before the committee or board of trustees of the district or unit in which the teacher is teaching. And after a full and fair hearing, the action of the committee or board of trustees shall be final: Provided, the teacher shall be given the right to appeal to the county board of education or to the courts.

Every teacher dismissed for cause shall be reported by the superintendent to the State Superintendent, who shall have authority to revoke the certificate and debar the teacher from teaching in any other county. (1923, c. 136, ss. 131, 163; C. S., ss. 5534, 5560.)

Liability of Committee.—It is the duty of the committee of a school district, under the statute, to dismiss a teacher of the public schools therein who has not been legally appointed, according to the statute, and no damages are recoverable against

the individual members when in the exercise of this rightful power they act accordingly, whether their motives were bad or otherwise. *Spruill v. Davenport*, 178 N. C. 364, 100 S. E. 527 (1919).

§ 115-144. Duties of teachers.—It shall be the duty of all teachers to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of the children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercise for all children; to teach as thoroughly as they are able all

branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in public school music; to ascertain the cause for nonattendance of pupils, and report all violators of the compulsory school law to the attendance officer in accordance with the rule governing attendance and reports; and to enter actively into the plans of the superintendent for the professional growth of the teachers. (1923, c. 136, s. 165; C. S., s. 5562.)

§ 115-145. Power to suspend or dismiss pupils.—A teacher in a school having no principal, or the principal of a school, shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. But every suspension for cause shall be reported at once to the attendance officer, who shall investigate the cause and shall deal with the offender in accordance with rules governing the attendance of children in school. (1923, c. 136, s. 166; C. S., s. 5563.)

§ 115-146. Duty to make reports to superintendent; making false reports or records.—Every teacher or principal of a school under the jurisdiction of the county board receiving aid from the public school fund shall be required to make such reports as are required by the county board of education, and the county superintendent shall not approve the voucher for the pay of teachers at the end of each month until the monthly reports required are made, and at the end of the year until the final reports are made: Provided, the county superintendent may require teachers to make reports to principals, and principals to make reports to the superintendent. Provided, that any superintendent, principal, teacher or other school employee employed in the public schools of North Carolina, who knowingly and willfully makes or procures another to make any false report or records, requisitions, or pay rolls, respecting daily attendance of pupils in the public schools of North Carolina, pay roll data sheets or other reports made or required to be made to any board or officer in the performance of their duties, shall be guilty of a misdemeanor and upon conviction fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the State Superintendent of Public Instruction. (1923, c. 136, s. 167; C. S., s. 5564; 1951, c. 1027, s. 3.)

Editor's Note. — The 1951 amendment inserted the second proviso.

§ 115-147. Care of the school building.—It is the duty of the teachers and principals in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the school day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of the term a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible under the provisions of this section. If any child in school shall carelessly or willfully damage school property, the teacher shall report the damage to the parent, and if he refuses to repair the same, the teacher shall report the offense to the superintendent of public welfare. (1923, c. 136, s. 168; C. S., s. 5565.)

§ 115-148. Principal of union school.—The principal of a union school shall be the executive officer of the school, and all teachers in both the high school and in the elementary school departments shall be responsible to the principal. He shall have authority, subject to the approval of the county super-

intendent, to grade and classify the pupils, and exercise discipline over the pupils of the school. He shall make all reports to the county superintendent, and give suggestions to teachers for the improvement of instruction in school. And it shall be the duty of each teacher in a union school to co-operate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons. (1923, c. 136, s. 171; C. S., s. 5568.)

Cross Reference.—As to the allotment of principals, see § 115-360.

ARTICLE 17.

Certification of Teachers.

§ 115-149. **Requirement as to holding certificates.**—All the teachers and principals employed in the public schools of the State or in schools receiving public funds for the maintenance of a nine months school term shall be required to hold certificates in accordance with the law, and no contract for the employment of teacher or principal is valid until the certificate is secured. (1923, c. 136, s. 158; C. S., s. 5569; 1943, c. 255, s. 2.)

Editor's Note. — The 1943 amendment increased the school term from eight months to nine months.

§ 115-150. **Examinations, accrediting, and certificates.** — The State Board of Education shall have entire control of examining, accrediting without examination, and certificating all applicants for the position of teacher, principal, supervisor, superintendent, and assistant superintendent in all public elementary and secondary schools of North Carolina, urban and rural. The Board shall prescribe rules and regulations for examining, accrediting without examination, and certificating all such applicants for the renewal and extension of certificates and for the issuance of life certificates. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S., s. 5570.)

§ 115-151. **Certificate prerequisite to employment.**—No person shall be employed or serve in the public schools as teacher, principal, supervisor, superintendent, or assistant superintendent who shall not be certificated for such position by the State Board of Education in accordance with the law. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S., s. 5571.)

Cited in Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744 (1928).

§ 115-152. **Teacher must be eighteen.**—No certificate to teach shall be issued to any person under eighteen years of age. (Rev., s. 4163; C. S., s. 5572.)

Cited in Hampton v. Board of Education, 195 N. C. 213, 141 S. E. 744 (1928).

§ 115-153. **Approval of certificates; refusal of approval; appeal and review.**—No certificate issued by the board shall be valid until approved and signed by the superintendent of the county administrative unit, or the superintendent of the city administrative unit, in the schools of which the holder of said certificate applies to teach. Any certificate when so approved by said county or city superintendent shall be of State-wide validity, and in case such county or city superintendent shall refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1917, c. 146, s. 2; 1921, c. 146, s. 16; C. S., s. 5574.)

§ 115-154. **Employment of persons without certificate unlawful; appropriations withheld; salaries not paid.**—It shall be unlawful for any board

of trustees or school committee or any public school that receives any public school money from county or State to employ or keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent who does not hold a certificate in compliance with the provisions of the law. Upon notification to the State Board of Education or to the county board of education that any school committee or board of trustees is employing or keeping in service a teacher, supervisor, principal, superintendent, or assistant superintendent in violation of the provisions of this section, the State Board of Education shall withhold from such county or city administrative unit any and all appropriations from the State for such school, and said county board of education shall withhold from said school any and all appropriations from the county school fund until compliance with the law.

The county or city superintendent or other official is forbidden to approve any voucher for salary for any person employed in violation of the provisions of this section, and the treasurer of the county or city schools is hereby forbidden to pay out of the school fund the salary of any such person: Provided, that nothing herein shall prevent the employment of temporary substitute or emergency teachers under such rules as the State Board of Education may prescribe. (1917, c. 146, s. 6; 1921, c. 146, s. 16; C. S., s. 5582.)

§ 115-155. Classes of first-grade certificates.—There shall be the following classes of first-grade certificates: (1) Superintendents' and assistant superintendents'; (2) high school principals'; (3) high school teachers'; (4) elementary school teachers'; (5) elementary supervisors'; and (6) special. The State Board of Education may subdivide and shall define in detail the different classes of first-grade certificates, determine the time of their duration and validity, prescribe the standards of scholarship for same, and the rules and regulations for them and for their issuance, and their renewal or extension. (1917, c. 146, s. 9; 1921, c. 146, s. 16; C. S., s. 5583.)

§ 115-156. Colleges to aid as to certificates.—Each and every college or university of the State is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates without restrictions, except as set forth in the rules and regulations of the State Board of Education, applying alike to all departments, work, and instructors of each and every college or university in this State. (1933, c. 497.)

SUBCHAPTER VII. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 18.

County Board of Education; Budget.

§ 115-157. Contents of the school budget.—The school budget prepared by the county board of education shall provide three separate school funds (a) a current expense fund, (b) a capital outlay fund, and (c) a debt service fund.

(a) The current expense fund shall include: (1) Expenses of general control—per diem of board of education, salaries of superintendents, attendance officer, and clerical assistants, travel and communication, office supplies and expense, and other necessary expenses of general control; (2) instructional service—salaries of teachers, principals, and supervisors, and any other necessary items of instruction; (3) operation of school plant—wages of janitors and other employees, fuel, water, light and power, janitors' supplies, expenses for care of grounds, and other necessary expenses of operation; (4) maintenance of plant—upkeep of grounds, repair of buildings, repair and replacement of heating, lighting and plumbing equipment, instructional apparatus, furniture, and other equipment, and other necessary expenses of maintenance; (5) fixed charges—

rent, insurance and other necessary fixed charges; (6) auxiliary agencies—replacement of and repair of library books, transportation of pupils, and other necessary auxiliary activities.

(b) The capital outlay fund shall provide for the purchase of sites, the erection of school buildings, including dormitories and teachers' homes, improvement of new school grounds, alteration and addition to buildings, installation of heating, lighting and plumbing, purchase of furniture, including instructional apparatus for new buildings, office equipment, acquisition of trucks and other vehicles for the transportation of pupils and for the better operation and administration of schools, and other necessary capital outlay.

(c) The debt service fund shall provide for the payment of all loans due the State, the interest and principal on bonds, payments to the sinking fund, payment of district indebtedness for schools assumed by the county, apportionment to districts voting bonds or to districts borrowing from the county board of education and all other indebtedness which is payable during the fiscal year for which the budget is prepared. (1923, c. 136, s. 175; C. S., s. 5596; 1925, c. 180, s. 5; 1927, c. 239, s. 1; 1933, c. 299.)

Cross Reference. — As to local budgets, see also, § 115-363.

Premiums for insurance of its public school buildings is a necessary public expense of a county, and the incurring of liability therefor need not be submitted to the voters. *Fuller v. Lockhart*, 209 N. C. 61, 182 S. E. 733 (1935).

Cited in *Wiggins v. Board of Education*,

198 N. C. 301, 151 S. E. 730 (1930); *Board of Education v. Walter*, 198 N. C. 325, 151 S. E. 718 (1930); *Wilkinson v. Board of Education*, 199 N. C. 669, 155 S. E. 562 (1930); *Hickory v. Catawba County*, 206 N. C. 165, 173 S. E. 56 (1934); *East Spencer v. Rowan County*, 212 N. C. 425, 193 S. E. 837 (1937).

§ 115-158. Debt service fund. — The county board of education shall set forth in the budget the amount of the interest and installments on all loans due the State, and of all interest and installments on bonds and other evidences of indebtedness that may fall due. This shall be a separate item in the budget, and the commissioners shall levy annually a tax sufficient, clear of all fees, commissions, rebates, delinquents and the cost of collection, to repay the same; and if the taxes are not collected when the repayments fall due, the commissioners shall borrow the money and place the amount to the credit of the county board of education.

The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided, if such election is required by the Constitution, may include in the debt service fund in the budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township or other political subdivision in the county (hereinafter collectively called "local districts"), lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of article 9 of chapter 153 of the General Statutes, known as "The County Finance Act," insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the County Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of this fund among the schools of the

county as provided in this section. (1923, c. 136, s. 179; C. S., ss. 5599, 5600; 1925, c. 180, s. 6; 1927, c. 239, ss. 4, 5; 1933, c. 299; 1951, c. 130, s. 1.)

Cross Reference.—As to local budgets in general, see § 115-363.

Editor's Note. — The 1951 amendment rewrote the second paragraph.

Validation of Assumption of Indebtedness.—Session Laws 1951, c. 130, s. 2, ratified February 28, 1951, provides: "The as-

sumption by any county, at any time prior to the ratification of this act, of the indebtedness of local districts for school purposes and all proceedings had in connection therewith are hereby in all respects ratified, approved, confirmed and validated."

ARTICLE 19.

Powers, Duties and Responsibilities of the Board of County Commissioners in Providing Certain Funds.

§ 115-159. Commissioners to levy tax.—The commissioners are required to levy annually a tax sufficient to repay interest and installments on all loans from the State, and interest and installments on bonds and notes falling due according to the debt service fund as set forth in the approved school budget. And this shall be a separate tax, and, after all interest and installments are paid each year, any balance that may remain shall be accounted for by the treasurer, and it shall be applied the following year to the repayment of interest and installment on loans. But if the amount secured from this tax is not sufficient for these needs it shall be the duty of the commissioners to borrow any amount needed to meet these payments. (1923, c. 136, s. 185; C. S., s. 5606; 1927, c. 239, s. 11.)

Editor's Note.—The 1927 amendment added all of that part of the first sentence following the word "due".

Cited in *Hampton v. Board of Education*, 195 N. C. 213, 141 S. E. 744 (1928).

§ 115-160. Procedure in cases of disagreement or refusal of county commissioners to levy school taxes.—In the event of a disagreement between the county board of education and the board of county commissioners as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, the county board of education and the board of county commissioners shall sit in joint session, and each board shall have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board. In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between said two boards, and shall render his decision thereon within ten days. But either the county board of education or the board of county commissioners shall have the right to appeal to the superior court within thirty days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive, and shall give judgment requiring the county commissioners to levy the tax which will provide the amount of the current expense fund, the capital outlay fund and the debt service fund, which he finds necessary to maintain the schools in every school district in the county. Any board of county commissioners failing to obey such order and to levy the tax ordered by the court shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. In case of an appeal to the superior court, all papers and records relating to the case shall be considered a part of the record for consideration by the court. (1923, c. 136, s. 187; C. S., s. 5608; 1925, c. 180, s. 4; 1927, c. 239, ss. 12, 13; 1933, c. 299.)

Editor's Note. — The 1925 amendment inserted the words "the operation and equipment fund." The 1925 amendment was repealed by § 13 of the 1927 amendment and § 12 of the 1927 amendment inserted the words "the current expense

fund, the capital outlay fund, and the debt service fund," in lieu of the words "salary fund or the fund necessary to pay interest and installments on bonds, notes and loans."

In General.—This section confers upon the courts duties of a judicial nature, not requiring a trial by jury to determine the disputed matter upon an issue of fact, and the provisions of this section are not void as being repugnant to Art. I, § 19 of the State Constitution. *Board v. Board*, 174 N. C. 469, 93 S. E. 1001 (1917); *Board v. Board*, 182 N. C. 571, 109 S. E. 630 (1921); *In re Board of Education*, 187 N. C. 710, 122 S. E. 766 (1924).

Meeting Must Be Held.—Where the

commissioners have refused to levy a tax to provide an additional salary for the county superintendent and the meeting called for in this section has not been held nor the clerk called upon to arbitrate the matter it is erroneous to grant a writ of mandamus to the superintendent to compel the commissioners to levy the tax. *Rollins v. Rogers*, 204 N. C. 308, 168 S. E. 206 (1933).

Cited in *Board of Education v. Walter*, 198 N. C. 325, 151 S. E. 718 (1930); *Board of Education v. Board of Commissioners*, 198 N. C. 430, 152 S. E. 156 (1930); *Wilkinson v. Board of Education*, 199 N. C. 669, 155 S. E. 562 (1930).

§ 115-161. Commissioners may demand a jury trial.—The county commissioners shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding term of the superior court, and shall have precedence over all other business of the court: Provided, that if the judge holding the court shall certify to the Governor, either before or during such term, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said term, the Governor shall immediately call a special term of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such term. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the county commissioners shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the Supreme Court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the commissioners to levy for the ensuing year a rate sufficient to pay the debt service fund, to produce, together with what may be received from the State public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1923, c. 136, s. 188; C. S., s. 5609; 1927, c. 239, s. 14.)

Editor's Note.—By the 1927 amendment, the words "current expense fund, and the capital outlay fund," as used in the first sentence replaced the words "teachers' salary fund and the operating and equipment fund"; the words "the debt service fund" as used in the proviso at the end of the section replaced the words "interest and installment on notes, loans and bonds";

the words "current expense funds" used in the same proviso replaced the words "teachers' salary fund."

Applied In *re Board of Education*, 187 N. C. 710, 122 S. E. 760 (1924).

Cited in *Board of Education v. Board of Commissioners*, 198 N. C. 430, 152 S. E. 156 (1930).

§ 115-162. Commissioners to estimate what per cent school fund is of total county fund.—It is the duty of the county commissioners to furnish the county board of education, as soon as the tax books for the year are completed, a statement showing what per cent the school fund is of the total county fund, and at least this same per cent of the amount of taxes as they are collected and deposited in the treasury shall be placed to the credit of the county board of education. (1923, c. 136, s. 191; C. S., s. 5612.)

§ 115-163. Commissioners require sheriff to settle.—Every sheriff or tax collector shall deposit the county and other local taxes collected by him with the county treasurer as often as he shall collect or have in his possession at any one time a sum equal to five hundred dollars (\$500.00).

On or before the close of the fiscal year the sheriff in settling with the board of county commissioners shall exhibit the total amount of the school fund from all sources received, the net amount paid over to the county treasurer, and the net amount due each of the following funds:

(1) The current expense fund, (2) the capital outlay fund, and (3) the debt service fund. The sheriff shall also exhibit the amount of uncollected taxes due because of insolvent polls, releases, errors, and rebates allowed by the board of county commissioners, and other causes for failure to collect the entire amount of the taxes due, and the sheriff shall furnish to the county board of education at the time of his settlement with the county commissioners, as provided in this section, a complete itemized copy of his statement. (1923, c. 136, s. 192; C. S., s. 5613; 1927, c. 239, s. 15.)

Cross Reference.—As to the duty of the county treasurer to remit school funds monthly to proper administrative units, see § 115-363.

Editor's Note.—The change of the name of the funds was the only change by the 1927 amendment.

§ 115-164. Duty of sheriff or tax collector.—It shall be the duty of the sheriff or the tax collector in collecting the taxes of local tax districts to keep the funds of each district separate from all other funds, and when public school funds are deposited with the treasurer, the sheriff or tax collector shall specify which funds belong to local tax districts and to what district the local tax funds belong. (1923, c. 136, s. 148; C. S., s. 5550.)

ARTICLE 20.

The Treasurer: His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-165. Treasurer of school funds.—(1) County School Administrative Unit.—The county treasurer of each county shall be the treasurer of all county school funds and school district funds of county school administrative units. He shall receive and disburse all such school funds and shall keep the same separate and distinct from all other funds.

Before entering upon the duties of his office, the county treasurer shall furnish bond in some surety company authorized to do business in North Carolina in an amount to be fixed by the board of county commissioners, which bond shall be a separate bond, not including liability for other funds, and shall be conditioned for the faithful performance of his duties as treasurer of the county school funds and school district funds of the county administrative unit, and for the payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of county commissioners may from time to time, if necessary, require him to strengthen his bond.

In all counties in which the office of county treasurer has been abolished as authorized by G. S. 155-3, or when by any other law a bank or trust company has been substituted therefor, such bank or trust company shall act as treasurer and depository of all county school funds and school district funds; provided, however, that such bank or trust company acting as treasurer of county school funds and district school funds shall not be required to maintain the system of bookkeeping and accounting imposed upon the county treasurer by G. S. 155-7, but the duty and responsibility of keeping and maintaining the accounting system as to county and district school funds shall be the duty and responsibility of the county accountant or county auditor serving as such under the provisions of G. S. 153-15; and, provided further, that nothing contained in this section shall

relieve the superintendent of any county administrative unit from maintaining such accounting system and furnishing such reports as are now or may hereinafter be imposed upon him by law.

(2) City School Administrative Unit.—Unless otherwise provided by law, the board of trustees of a city administrative unit shall appoint a treasurer of all the school funds of such city administrative unit. The treasurer so appointed shall continue to fill such position at the will of the board of trustees of such city administrative unit. No person authorized to make the expenditures or draw vouchers therefor, or to approve the same, shall act as treasurer of such funds.

Before entering upon the duties of his office, the treasurer of such city administrative unit shall file with the trustees of such administrative unit a good and sufficient bond with surety by some surety company authorized to do business in North Carolina in an amount to be fixed by the board of trustees of such administrative unit, which shall be a separate bond, not including liability for any other funds, and shall be conditioned for the faithful performance of the duties of treasurer of the city administrative unit school funds and for the proper accounting for all such funds as may come into his possession by virtue of his office as treasurer and for payment to his successor in office of any unexpended balance of school moneys which may be in his hands.

The treasurer of city administrative unit school funds is hereby required to maintain and keep, with respect to said funds, like records and accounts and make such reports with respect to said funds as herein provided to be made, kept, and maintained by the treasurer of county and district school funds of county administrative units.

(3) Special Funds of Individual Schools.—The county board of Education of all county administrative units and the board of trustees of all city administrative units shall, by proper resolution duly recorded, appoint a treasurer of all special school funds for each school in the respective administrative unit. In all individual schools a complete record shall be kept by the treasurer so appointed and reports made of all money received and from what source and of all money disbursed and for what purpose; provided, however, that nothing in this subsection (3) shall prevent the handling of these special school funds under subsection (1) and subsection (2) of this section. The treasurer of all special funds so appointed and the principal of each school shall make a monthly report, and such other reports as may be required, to the superintendent of the administrative unit wherein such individual school is located, showing the status of each special school fund, upon forms to be supplied for that purpose. (1923, c. 136, s. 193; C. S., s. 5614; 1949, c. 1082, s. 1.)

Editor's Note. — The 1949 amendment rewrote this section.

§ 115-166. **Operation of county school budget.**—(a) **Duty of County Board of Education.**—On or before the first Monday in each month the county board of education shall file with the county board of commissioners a written statement showing the condition of the annual school budget at the close of the preceding month. This statement shall also include a careful estimate of the necessary expenditures which will be made during the current month from the local school budget. In like manner each city administrative unit shall prepare and file with the county board of commissioners a similar statement, which shall be the guide in determining for the city administrative unit the amount which shall be included in the monthly statement of cash needs: Provided, that no payment to city administrative unit shall be made until a copy of the audit for the previous year for the city administrative unit has been filed as provided by law.

(b) **Duty of the County Board of Commissioners.**—It shall be the duty of the board of county commissioners to provide when and as needed the funds

necessary to meet the monthly expenditures as set forth in the statements prepared by the county board of education and the governing body of the city administrative unit in accordance with the budget. (1923, c. 136, s. 194; C. S., s. 5615; 1925, c. 138, s. 2; 1927, c. 239, s. 16.)

Editor's Note.—This section was re-en- and revised in the General Statutes adopted acted by Public Laws 1927, ch. 239, § 16, by the General Assembly of 1943.

§ 115-167. **Action against the treasurer to recover funds.**—After final settlement with the sheriff, if it shall appear that any part of the public school fund received by the county treasurer has not been properly placed to the credit of the respective board, either the county board of education or the city administrative unit board of trustees, as the case may be, shall bring action on the treasurer's bond to recover any part of the fund still belonging to the respective board. If the county treasurer fails to perform his duties as herein and above prescribed, he shall be guilty of a misdemeanor and be fined or imprisoned in the discretion of the court. (1923, c. 136, s. 195; C. S., s. 5616.)

§ 115-168. **County board of education to have accounts of the board of education and the county treasurer of the public school fund audited.**—On or before the first day of August of each year the county board of education shall cause to be audited the books of the treasurer of the county school fund and the accounts of the county board of education, and shall provide for the cost of the same, where a county auditor is not provided by special statute, out of the current expense fund. The auditor's report shall show:

(a) For the School Term.—(1) Sources of revenues and purposes for which expenditures were made; (2) comparison of approved school budget with the actual transactions; (3) statement of salary paid each teacher, principal, supervisor, or superintendent, and all other employees employed in the county system, showing what part was paid out of the State and county school fund, and what part was paid out of the local tax funds; (4) the auditor shall compare the expenditures with the budget approved by the State Superintendent of Public Instruction, and report whether all salaries and other expenses have been paid in accordance with law; (5) the auditor shall check the average daily attendance by districts as shown in the budget against the monthly reports from the district listing the high school and elementary school average daily attendance separately, and including a statement covering the average daily attendance maintained during the scholastic year which the financial transactions cover and also the average daily attendance maintained during the year next preceding the year covered by the financial transactions contained in the audit; (6) statement of outstanding indebtedness, including county school bonds, amounts due the State Board of Education, and all unpaid accounts; (7) appraisal of all school property; and (8) all other items which will aid in making a complete audit.

(b) For Local Tax Districts.—In similar details, the audit of the county board of education shall include accounts of local tax districts and special county taxes.

(c) For City Administrative Unit.—In like manner and in similar details, unless otherwise provided in special act, the board of trustees of each city administrative unit shall cause to be audited the accounts of the treasurer and board of trustees of the city administrative unit.

At least a consolidated statement of the report of the auditor shall be published in some newspaper circulating in the county, or in bulletin form, and one copy of the complete report shall be sent to the State Superintendent of Public Instruction, and one copy shall be given to the chairman of the board of county commissioners, and one copy to the chairman of the county board of education.

If the board of education or board of trustees shall fail to have all accounts audited as provided herein, the State Superintendent shall notify the State Auditor and said State Auditor shall send an auditor to said county and have

the accounts audited in accordance with the provisions of this section, and all expenses for the same shall be paid by the county board of education or the board of trustees, as the case may be. (1923, c. 136, s. 198; C. S., s. 5618; 1927, c. 239, s. 19.)

Local Modification.—Currituck: 1945, c. 898.

Cross Reference.—See also, § 115-369.

§ 115-169. Action on the treasurer's bond.—The board of county commissioners shall bring action in the name of the State for any breach of the bond of the treasurer or for any failure to account properly for the funds received by him, except in cases where action is otherwise provided for. If the commissioners shall fail to bring such action, it may be brought in the name of the State upon the relation of any taxpayer. (1923, c. 136, s. 200; C. S., s. 5620.)

§ 115-170. Annual report to State Superintendent.—The treasurer of any county or city administrative unit school fund shall report to the State Superintendent of Public Instruction, on the first Monday of August of each year, the entire amount of money received and disbursed by him during the preceding school year, designating by items the amount received, respectively, from property tax, poll tax, fines, forfeitures and penalties, auctioneers, estrays, from the State Treasurer and from the other sources. He shall also designate by item the sum paid to teachers of each race, respectively, the sums paid for school-houses, school sites in the several districts, and for all other purposes, specifically and in detail, by item. (1923, c. 136, s. 201; C. S., s. 5621.)

§ 115-171. Report to board.—On the same date that he reports to the State Superintendent, he shall file a duplicate of such report in the office of the county board of education or board of trustees of the city administrative unit. He shall make such other reports as the board may require from time to time. (1923, c. 136, s. 202; C. S., s. 5622.)

§ 115-172. Exhibit books, vouchers, and money to board.—The treasurer of the school fund shall, when required by the county board of education or board of trustees of the city administrative unit, produce his books and vouchers for examination, and shall also exhibit all moneys due the public school fund at such settlement required by this article. (1923, c. 136, s. 203; C. S., s. 5623.)

§ 115-173. Duties on expiration of term.—Each treasurer of the school fund, in going out of office, shall deposit in the office of the board of education or board of trustees of the city administrative unit his books in which are kept his school accounts, and all records and blanks pertaining to his office. If his term expires on the thirtieth day of November during any fiscal school year, or if for any reason he shall hold office beyond the thirtieth day of November and not for the whole of the current fiscal school year, he shall at the time he goes out of office file with the board and with his successor a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the State Superintendent of Public Instruction the receipts and disbursements for the current fiscal year. (1923, c. 136, s. 204; C. S., s. 5624.)

§ 115-174. Penalty for failure to report.—If any treasurer of the county or city administrative unit school fund shall fail to make reports required of him at the time and in the manner prescribed, or to perform any other duties required of him by law, he shall be guilty of a misdemeanor and be fined not less than fifty dollars (\$50.00) and not more than two hundred dollars

(§200.00) or imprisoned not less than thirty days nor more than six months, in the discretion of the court. (1923, c. 136, s. 205; C. S., s. 5625.)

§ 115-175. **Treasurer of city administrative unit bonded.**—The treasurer of every city administrative unit shall be required by the board of trustees of said unit to execute a justified bond, with security, in an amount to be fixed by the board of trustees, not less than one-half the total amount of money received by him or his predecessor during the previous year, conditioned for the faithful performance of his duties as treasurer of the funds of the unit, and for the payment over to his successor in office of any balance of school moneys that may be in his hands unexpended. This bond shall be a separate bond, not including liabilities for other funds, and shall be approved by the board of trustees of said unit; and that board may from time to time, if necessary, require him to strengthen his bond. (1923, c. 136, s. 206; C. S., s. 5626.)

§ 115-176. **Speculating in teachers' salary vouchers.**—If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or State officer shall engage in the purchasing of any teacher's salary voucher at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation thereon, he shall be guilty of a misdemeanor and shall be fined or imprisoned, and shall be liable to removal from office at the discretion of the court. (1923, c. 136, s. 208; C. S., s. 5627.)

ARTICLE 21.

Fines, Forfeitures and Penalties.

§ 115-177. **Constitutional provisions.**—All moneys, stocks, bonds and other property belonging to a county school fund, also the net proceeds from the sale of estrays, also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State, and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties in this State. (Const., art. 9, s. 5; 1923, c. 136, s. 209; C. S., s. 5628.)

Cross Reference.—As to duty of county superintendent to see that funds are properly accounted for, see § 115-382.

Cited in State v. Welborn, 205 N. C. 601, 172 S. E. 174 (1934).

§ 115-178. **Statement of fines kept by clerk.**—It is the duty of the clerks of the several courts and of the several justices of the peace to enter in a book, to be supplied by the county, an itemized detailed statement of the respective amounts received by them in the way of fines, penalties, amercements and forfeitures, and said books shall at all times be open to the inspection of the public. (1923, c. 136, s. 210; C. S., s. 5629.)

§ 115-179. **Fines paid to treasurer for schools; annual report.**—All fines, forfeitures, penalties and amercements collected in the several counties by any court or otherwise shall be accounted for and paid to the county treasurer by the officials receiving them within thirty days after receipt thereof, and shall be faithfully appropriated by the county board of education for the establishment and maintenance of free public schools; and the amounts collected in each county shall be annually reported to the Superintendent of Public Instruction on or before the first Monday in January, by the board of commissioners. (1923, c. 136, s. 211; C. S., s. 5630; 1951, c. 785, s. 1.)

Editor's Note.—The 1951 amendment substituted "thirty" for "sixty".

§ 115-180. **Failure to file report of fines.**—If any officer who is by law required to file any report or statement of fines or penalties with the county board of education shall fail so to do at or before the time fixed by law for the filing of such report, he shall be guilty of a misdemeanor. (1923, c. 136, s. 212; C. S., s. 5631.)

§ 115-181. **Fines and penalties to be paid to school fund.**—Whenever any officer, including justices of the peace, receives or collects a fine, penalty, or forfeiture in behalf of the State he shall, within thirty days after such reception or collection, pay over and account for the same to the treasurer of the county board of education for the benefit of the fund for maintaining the free public schools in such county. Whenever any fine or penalty is imposed by any officer the said fine or penalty shall be at once docketed, and shall not be remitted except for good and sufficient reasons, which shall be stated on the docket. (1923, c. 136, s. 213; C. S., s. 5632.)

§ 115-182. **Misappropriation of fines a misdemeanor.**—Any officer, including justices of the peace, violating § 115-181, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, at the discretion of the court. (1923, c. 136, s. 214; C. S., s. 5633.)

§ 115-183. **Unclaimed fees of jurors and witnesses paid to school fund.**—All moneys due jurors and witnesses which remain in the hands of any clerk of the superior court on the first day of January after the publication of a third annual report of the said clerk showing the same, shall be turned over to the county treasurer for the use of the school fund of the county, and it is the duty of said clerk to indicate in his report any moneys so held by him for a period embracing the two annual reports. (1923, c. 136, s. 215; C. S., s. 5634.)

§ 115-184. **Use by public until claimed.**—The money aforesaid, while held by the clerks, shall be paid, on application, to the person entitled thereto; and after it ceases to be so held, it may be used as other revenue, subject, however, to the claim of the rightful owner. (1923, c. 136, s. 216; C. S., s. 5635.)

SUBCHAPTER VIII. LOCAL TAX ELECTIONS FOR SCHOOLS.

ARTICLE 22.

School Districts Authorized to Vote Local Taxes.

§ 115-185. **Purpose of re-enactment.**—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this Code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-186. **How elections may be called.**—The citizens of any duly created school district are hereby authorized to petition for a local tax election for schools, as follows: A written petition signed by twenty-five qualified voters who have resided at least twelve months within the district, or if fewer than seventy-five of such qualified voters, reside in the territory, then by one-third of such qualified voters, shall be presented to the county board of education asking for an election in the district to ascertain whether there shall be levied in said district a local annual tax not to exceed fifty cents (50c) on the one hundred dollar (\$100.00) valuation of all property, real and personal, to supplement the funds for the nine months public school term for that district: Provided, that the petition for an election to be held in any city administrative unit shall be

presented to the board of trustees of said district. (1923, c. 136, s. 219; C. S., s. 5639; 1943, c. 255, s. 2.)

Cross References.—See note to § 115-1. As to local supplements generally, see § 115-361. See also, § 115-202. As to constitutional provision requiring election, see Const., Art. VII, § 7.

Editor's Note. — The 1943 amendment substituted the words "nine months" for the words "eight months."

In General.—For an able discussion of this subject by Mr. Justice Hoke in which the various statutes pertaining to the subject are considered, see *Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924).

Approval of Voters of Each District Unnecessary.—*Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924).

Who May Sign Petition.—The prior law in regard to authorizing local taxes was that the petition be signed by freeholders. In *Gill v. Board*, 160 N. C. 176, 76 S. E. 203 (1912) it was held that women were not freeholders. The Public Laws 1915, c. 22, § 1746 changed this rule and made it possible for women to sign petitions as required in forming tax districts. See *Chitty v. Parker*, 172 N. C. 126, 90 S. E. 17 (1916).

Cited in *Platt v. Board*, 187 N. C. 125, 121 S. E. 190 (1924); *Forester v. North Wilkesboro*, 206 N. C. 347, 174 S. E. 112 (1934).

§ 115-187. The board to consider petition.—The county board of education or the board of trustees, as the case may be, shall receive the petition and give it due consideration. If the board shall approve the petition for an election, it shall be endorsed by the chairman and secretary of the board and a record of the endorsement shall be made in the minutes of the board. The petition shall then be presented to the board of county commissioners or the governing body authorized to order the election, and it shall be the duty of the board of county commissioners or said governing body to call an election and fix the date for the same: Provided, the county board of education or board of trustees, as the case may be, may, for any good and sufficient reason, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held. In the case of a city administrative unit coterminous with or situated entirely within an incorporated city or town, said petition shall be presented to the governing body of said city or town, and the election shall be ordered by said governing body. (1923, c. 136, s. 220; C. S., s. 5640; 1925, c. 143, s. 1.)

Editor's Note. — The 1925 amendment added the last sentence.

The duty of the board of education under this section in connection with § 115-191 is discretionary and cannot be enforced by mandamus. *Board v. Board*, 189 N. C. 650, 127 S. E. 692 (1925).

Same—Duty of Commissioners Minis-

terial.—But this section does not rest in the county commissioners discretion to order or not order an election. After the board of education has approved the petition, the duty of the commissioners is ministerial only and may be enforced by mandamus. *Board v. Board*, 189 N. C. 650, 127 S. E. 692 (1925).

§ 115-188. Rules governing election for local taxes.—In all elections held under this law the board of county commissioners, or the body authorized to order said election, shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of said election when the returns have been filed with them by the officers holding the election, and shall record such determination on their records. The notice of the election shall be given by publication at least three times in some newspaper published or circulated in the territory. It shall set forth the boundary lines of the district, the maximum rate of tax to be levied, which shall not exceed fifty cents (50c) on the one hundred dollars (\$100.00) valuation of property, real and personal, and the purpose of the tax. The first publication shall be at least thirty days before the election. A new registration of the qualified voters of the territory shall be ordered, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in said district at least twenty days before the close of the registration books.

This notice of registration may be considered one of the three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article such election shall be held in accordance with the law governing general elections. The ballots to be used in said election shall have written or printed thereon the words "For local tax," and "Against local tax." All other details of said election shall be fixed by the board or other governing body ordering the election, and the expenses of holding and conducting the election in all districts other than in city administrative units shall be provided by the county board of education out of the current expense fund of the county. But the expenses of conducting the election in all city administrative units shall be paid by the board of trustees of said unit out of the local tax funds of the unit. (1923, c. 136, s. 221; C. S., s. 5641.)

Cross Reference.—As to time registration books must be kept open, see § 163-31.

Notice in Newspaper.—It is not necessary that the newspaper, in which the notice of election is given be published in the district, it is sufficient if the paper is circulated in the district where the election is to be held. See *Miller v. Duke School Dist.*, 184 N. C. 197, 113 S. E. 786 (1922).

And failure to give the notice has been held immaterial where such failure did not affect the result of the election. See *Younts v. Com.*, 151 N. C. 582, 66 S. E. 575 (1909);

Gregg v. Board, 162 N. C. 479, 78 S. E. 301 (1913).

What Constitutes a Majority Vote.—The requirement that the measure shall be carried by a "majority of the qualified voters," by correct interpretation, signifies a majority of the qualified voters of the district appearing upon the registration book, and not a majority of those voting in the election. *Williams v. County Com.*, 176 N. C. 554, 97 S. E. 478 (1918).

Cited in *Young v. Commissioners*, 194 N. C. 771, 140 S. E. 740 (1927).

§ 115-189. **Levy and collection of taxes.**—In case a majority of those who shall vote thereon shall vote at the election in favor of the tax, it shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes, and the maximum rate so voted shall be levied, unless the county board of education or board of trustees shall request a levy at a lower rate, in which event the rate requested shall be levied and collected; and the superintendent of schools and the officer in charge of tax records shall keep records in their respective offices showing the valuation of the property, real and personal, in the district or unit, the rate of tax authorized annually to be levied, and the amount annually derived from the local tax, and it shall be illegal for any part of the local tax fund to be used for any purpose other than to supplement the funds for a nine months' school term in the district or unit. (1923, c. 136, s. 222; C. S., s. 5642; 1943, c. 255, s. 2; 1949, c. 918, s. 1.)

Editor's Note.—The 1943 amendment increased the school term from eight to nine months.

Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those

who shall vote". For brief comment on the amendment, see 27 N. C. Law Rev. 454.

As to subsequent statute affecting the majority of voters required, see § 153-92.1.

§ 115-190. **Increasing levy in districts having less than fifty cent rate.**—Authority is hereby given any local tax district or special bond tax unit having voted a maximum rate less than fifty cents (50c) to increase the levy to a maximum of fifty cents (50c) on the one hundred dollars (\$100.00) valuation of property, real and personal. Such increase shall be made after an election has been held as provided for in this article. (1923, c. 136, s. 223; C. S., s. 5643; 1925, c. 143, s. 2.)

§ 115-191. **Frequency of election.**—In the event that a majority of those who shall vote thereon in a district or unit do not at the election cast their votes

for the local tax, another election or elections under the provisions of this article may be held after the lapse of six months in the same district or unit. (1923, c. 136, s. 225; C. S., s. 5645; 1949, c. 918, s. 2.)

Editor's Note. — Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-192. Enlargement of local tax districts.—Upon a written petition of a majority of the governing board of any district, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this article: Provided, the local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of those who shall vote thereon in such new territory shall vote in favor of such tax, the new territory shall become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of those who shall vote thereon at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1923, c. 136, s. 226; C. S., s. 5646; 1925, c. 151; 1927, c. 88; 1949, c. 918, s. 3.)

Cross References. — As to consolidation of school districts, see §§ 115-99, 115-352. As to what constitutes a majority vote, see note to § 115-188. See also, § 115-361 which makes a similar provision for the enlargement of districts.

Editor's Note.—The cases which follow in this note are in the majority of instances constructions of § 5530 of the Consolidated Statutes of 1919 (renumbered § 5646 in Vol. 3 of the Consolidated Statutes published in 1924). The School Machinery Act, codified as G. S. 115-347 through 115-382, changed in many particulars the school system of North Carolina and this should be borne in mind when reading these cases.

Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

In General.—Laws of 1921, ch. 179, providing for the consolidation and adjustment of rates of taxation and authorizing the voters of a district so consolidated to vote special tax rates for the schools in the entire district, etc., should be construed to harmonize with C. S., § 5530 (this section) and the provisions of the former statute do not affect or impair the requirement of the latter one, that for an extension of the boundaries of an existing local school tax district or districts, the approval of the tax proposed must first be given by the voters in the proposed new and

contiguous territory. *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922).

Construed with Art. 23.—C. S., § 5526 (incorporated in Art. 23) providing for the creation of new local school tax districts, and § 5530, (this section) requiring the question of an enlargement of an existing special school tax district to be submitted separately to the voters of the proposed new territory are to be construed in *pari materia*, and the provisions of each are held reconcilable with those of the other. *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922).

C. S., § 5526 (incorporated in Art. 23), applies primarily to the consolidation of non-special school tax territory; and in order to consolidate existent school tax districts having rates, by extending the limits of some of them to include others, § 5530 (this section) requires that a majority of the committee or trustees of either of these districts sought to be enlarged file a written request with the county board of education to thus enlarge its boundaries, and an election must be held before consolidation, and the other material requirements of the statute complied with; and where this course has not been followed, the tax attempted to be levied in the consolidated district, and bonds ordered to be issued in pursuance thereof, are invalid. *Jones v. Board*, 187 N. C. 557, 122 S. E. 290 (1924). Attention is directed to the fact that the majority now required is not of the "committee or trustees" but of the "governing

board." In other respects this decision seems to be still applicable.—Ed. Note.

C. S., § 5526 (incorporated in Art. 23). providing for the creation of a special school tax district by the county board of education without regard to township lines, upon an election to be held within the proposed district, after notice, etc., refers to territory having no special school tax and has no application to the enlargement of such district under the provisions of this section, wherein one or more school tax districts having already been established and there is other contiguous territory sought to be included which has not voted any special school tax. *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922).

Where special school tax districts have been consolidated with nonschool tax territory, it is, in effect, an enlargement of the special tax territory, and coming within the provisions of C. S., § 5530 (this section) it is required for the validity of a special tax to be levied for school purposes in the enlarged territory that it be approved by the voters outside of the special tax districts included in the consolidated territory, at an election to be held according to law. *Barnes v. Board*, 184 N. C. 325, 114 S. E. 398 (1922).

Where special school tax districts and nonspecial school tax districts have been consolidated, and the district as a whole has voted, but separately as to each district, approving the question of special taxation for school purposes, and the election as to each, inclusive of the nontax territory, is upheld, counting the votes separately therein, the result of the election will be declared valid. *Board v. Bray Bros. Co.*, 184 N. C. 484, 115 S. E. 47 (1922).

Collateral Attack on Special Tax. — Where nonspecial school tax territory is included in a consolidated school tax district with a school tax district that has theretofore voted and continued to levy a special tax, the question of the validity of the tax so levied by the existing district cannot be attacked collaterally in a suit to enjoin the levy of a special tax on the entire consolidated district, later attempted to be formed. *Barnes v. Board*, 184 N. C. 325, 114 S. E. 398 (1922).

Same—Separate Vote in Nontax Territory.—Where one or more special tax districts have been established under the provisions of our statutes applicable, such districts may not extend their territory to include other districts and adjacent territory that have not voted a special tax, without the question having first been submitted to and approved separately by the voters of the outlying territory, and giving them

the right to independently determine for themselves whether they shall be specially taxed, in the amount proposed. *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922). See *Plott v. Board*, 187 N. C. 125, 121 S. E. 190 (1924).

The uniting of an existing special school tax district with other districts not having such tax is in effect the enlarging of the boundaries of the tax district to take in outlying nontax territory under the provisions of C. S., § 5530 (this section), and it is only required for the establishment of the enlarged district and the levying of a special tax therein that the district to be enlarged and the outlying territory should each cast a majority vote in favor of the propositions submitted to them, and it is unnecessary that each of the nontax districts included in the enlarged territory should have separately cast a majority vote in favor of the special tax proposed, nor is it material that one of them was separated from the others by the original special tax district so enlarged. *Vann v. Board*, 185 N. C. 168, 116 S. E. 421 (1923).

The authority given the county board of education to redistrict the entire county or part thereof, and to consolidate school districts under a uniform rate of taxation not exceeding the lowest in any one district, meets the requirements of our Constitution, Art. VII, § 7, but to the extent it permits consolidation of local school tax districts with adjacent territory or local schools that have never voted any tax, the provisions of C. S., § 5530 (this section) must apply so as to permit those living in such proposed new territory to vote separately upon the question of taxing themselves for the purpose. *Perry v. Commissioners*, 183 N. C. 387, 112 S. E. 6 (1922).

The combination or consolidation of local school tax districts with territory that has not voted a special tax for the purposes of schools must fall within the provisions of C. S., § 5530 (this section) whereby the proposed new territory is required to vote separately upon the question of taxation, in conformity with our Constitution, Art. VII, § 7. *Perry v. Commissioners*, 183 N. C. 387, 112 S. E. 6 (1922).

A district may be enlarged and a taxing district established therein on petition of the governing board of the principal district, and on taking the vote of the outside territory to be added, as indicated in this section. *Blue v. Board*, 187 N. C. 431, 122 S. E. 19 (1924).

Enlargement without Required Vote. — When a school district authorizes a local tax and later enlarges the district without

the election required being held in the new territory, and a tax is levied for four years without objections from the taxpayers, although the annexation was unconstitu-

tional the taxpayers will be estopped to deny the validity of the annexation. *Carr v. Little*, 188 N. C. 100, 123 S. E. 625 (1924).

§ 115-193. Abolition of district upon election.—Upon petition of one-half of the qualified voters residing in any local tax district established under this article, the same shall be indorsed and approved by the county board of education, and the board of county commissioners shall order another election in the district for submitting the question of revoking the tax and abolishing the district, to be held under the provisions prescribed in this article for holding other elections. It shall be the duty of the board of education to indorse the petition when presented, containing the proper number of names of qualified voters, and this provision is made mandatory, and the board is allowed no discretion to refuse to indorse the same when so presented. If at the election a majority of those who shall vote thereon in the district shall vote "Against local tax," the tax shall be deemed revoked and shall not be levied, and the district shall be discontinued: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes counties, petition of twenty-five per cent (25%) of the number of registered voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient: Provided, further, that in said counties, this section shall not apply to that part of such tax, if any, in said district as may be necessary to pay the interest on or amortization of any bonded or other indebtedness incurred in consequence of the voting of said special tax district but to that extent, and to that extent only, shall said special tax district be maintained. (1923, c. 136, s. 227; C. S., s. 5647; 1931, c. 372; 1949, c. 918, s. 4.)

Editor's Note.—It was the rule prior to this section that the approval of the board of education was necessary before a vote to abolish the district could be had, and the exercise of the power to approve was discretionary, there being no way to force the approval. *Key v. Board*, 170 N. C. 123, 86 S. E. 1002 (1915). By the express terms of the section now approval is mandatory.

The Act of 1931 added the provisos to this section.

Prior to the 1940 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

In General.—Under the provisions of § 115-192 a local tax school district may be abolished by the act of creating a new one of which it is a component part, while this section is restricted simply and singly to the abolition of an existing district, and so construed, it was held that these sections are in harmony with each other. *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922).

Abolition Unnecessary to Valid Consolidation.—Where, in accordance with the

provisions of chapter 136, Laws of 1923, an existent special charter tax district has been enlarged to take in added and adjoining territory, it is not required that such district should have first been abolished to make the consolidation valid according to §§ 115-193, 115-194, the requirements of these sections being intended to provide for the abolition of local tax districts when that was the single question presented. *Blue v. Board*, 187 N. C. 431, 122 S. E. 19 (1924).

Effect of Abolition on Taxes Already Levied.—Where a school district has been established under the provisions of the Revisal, § 4115, and in the exercise of the powers therein conferred have annually levied a tax for school purposes, and, accordingly, a tax was levied for the current year, but subsequently and in pursuance of chapter 135, Laws 1911, an election was ordered on the question of revoking the special tax, which was held and carried in favor of the repeal. It was held that the repeal of the former tax was prospective in its operation, and especially when the authorities had theretofore contracted with teachers and for other necessary expenses to carry on the school work authorized by

the former act. *Mann v. Allen*, 171 N. C. 219, 88 S. E. 235 (1916).

Cited in *Young v. Commissioners*, 194 N. C. 771, 140 S. E. 740 (1927).

§ 115-194. **Local tax district in debt may not be abolished.**—The provisions of this article as to abolishing local tax districts shall not apply when such local tax district is in debt in any sum whatever. (1923, c. 136, s. 228; C. S., s. 5648.)

§ 115-195. **Election for abolition not oftener than once a year.**—No election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition revoking such tax shall be approved by the county board of education oftener than once a year: Provided, this section shall not apply to any indirect abolition or reduction of taxes as may be elsewhere provided. (1923, c. 136, s. 229; C. S., s. 5649.)

In General.—This section requiring that “no election for revoking a special [now local] tax in any special [now local] tax district shall be ordered and held,” within less than two [now one] years from the date at which the tax was voted and the district established, “nor at any time within less than two [now one] years after the date of the last election on the question [of revoking the tax] in the district,” invalidates any election on the question of taxation held within two years [now one] after the last election, the second proposition being independent from the first as to “revoking” a special tax in the district, otherwise the second provision would be

identical with the first, and meaningless. *Weesner v. Davidson County*, 182 N. C. 604, 109 S. E. 863 (1921). The insertions in brackets by the editor indicate the changes in this section effected by the Laws of 1923.—Ed. Note.

Computing the Time. — Computing the two [now one] years period in which an election may be had with regard to taxation in a special [now local] school district under the provisions of this section, the time should be computed from the last valid election on the subject. *Weesner v. Davidson County*, 182 N. C. 604, 109 S. E. 863 (1921), approved in *Adcock v. Fuquay Springs*, 194 N. C. 423, 140 S. E. 24 (1927).

§ 115-196. **Enlarging boundaries of district within incorporated city or town.**—The boundaries of a district situated entirely within the corporate limits of a city or town, but not coterminous with such city or town, may be enlarged so as to make the district coterminous with such city or town either in the manner prescribed by this section or in the manner prescribed by § 115-192: Provided, however, that no district shall be enlarged under this section if the new territory necessary to be added to such district, in order to make it coterminous with such city or town, has any bonded debt incurred for school purposes, other than debt payable by taxation of all taxable property in such district and such new territory. In cases where the local annual tax voted to supplement the funds of the nine months' public school term is of the same rate in such district and in the new territory necessary to be added to such district in order to make the district coterminous with such city or town, the county board of education shall have power to enlarge the boundaries of the district as aforesaid. In cases where such tax rates are not the same, the boundaries of the district shall become so enlarged upon the adoption of a proposition for such enlargement by a majority of those who shall vote thereon in such new territory. The governing body of such city or town may at any time, upon petition of the board of education or other governing body of such district, or upon its own initiative if the governing body of the city or town is also the governing body of the district, submit the question of enlarging the district as aforesaid to the qualified voters of such new territory proposed to be added to such district at any general or municipal election or at a special election called for said purpose. Such an election may be ordered and held and a new registration for said election provided under the rules governing elections for local taxes as provided under the

article, except that the election and registration shall be ordered by and held under the supervision of and the result of the election determined by the governing body of such city or town. The ballots to be used in said election shall have printed or written thereon the words: "For the enlargement of school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended," and "Against the enlargement of school district, pursuant to section two hundred and thirty of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, as amended." If a majority of those who shall vote thereon in such new territory proposed to be added to such district shall vote in favor of such enlargement, said district shall thereupon become coterminous with said city or town, and there shall be levied annually in such new territory all taxes previously voted in said district for the purpose of supplementing the funds for the nine months' public school term for said district and for the purpose of paying the principal or interest of any bonds or other indebtedness previously issued or incurred by said district; and a vote in favor of such enlargement shall be deemed and held to be a vote in favor of the levying of such taxes. The validity of the said election and of the registration for said election and of the correctness of the determination of the result of said election shall not be open to question except in an action or proceeding commenced within thirty days after the determination of the result of said election. At the same time that said election is held, it shall be lawful to hold an election in the entire territory of said city or town on the question of issuing bonds of said city or town or of said school district as so enlarged, for school purposes, and levying sufficient tax for the payment of said bonds, or on the question of levying a local annual tax on all taxable property in said city or town or in said school district as so enlarged, to supplement the funds for the nine months' public school term for said district, in addition to taxes for the payment of bonds, in the same manner that would be lawful if said district had been so enlarged prior to the submission of said questions. One registration may be provided for all of said simultaneous elections. (1923, c. 136, s. 230; C. S., s. 5650; 1925, c. 143, s. 3; 1943, c. 255, s. 2; 1949, c. 918, s. 5.)

Editor's Note. — The 1925 amendment rewrote this section. Prior to that time the section provided that school districts situated within and coterminous with the boundary line of a town or city which after the district was created was not coterminous with such city or town because of change of boundaries, might be made coterminous and the board of education had power to consolidate the newly incorpo-

rated territory with the school district provided the tax rate was the same.

The 1943 amendment changed the term from eight to nine months.

Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-197. Local tax districts from portions of contiguous counties.

—a. Local tax districts may be formed as provided in this section out of contiguous portions of two or more counties.

The petition for such a district must be initiated as petitions for local tax elections are initiated under the provisions of this article, must be endorsed by the county boards of education of such contiguous counties and each county board of education shall certify to the board of county commissioners of its county that the metes and bounds of the proposed joint local tax district are in accordance with and are an integral part of the lawfully adopted plan of organization insofar as they pertain to said county.

The board of commissioners of each county, in compliance with the provisions of this article relating to the conduct of local tax elections, shall then call and hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the

board of commissioners ordering the election in that portion and the returns canvassed and recorded as required in this article for local tax districts.

b. In case the election carries in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district; which shall be and become a body corporate by the name and style of "..... Joint Local Tax School District of Counties." The county board of education having the largest school census and the largest area in the part of the joint local tax districts lying in its county shall determine the location of the schoolhouse; but if the largest census and area do not both lie in the same county, then the county boards shall jointly select the site for the building, and in case of a disagreement they shall submit the question to the board of arbitration, consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of the board of arbitration shall be binding upon all county boards of education concerned.

c. The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred in this section. This said committee shall have all the powers and duties of committee of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

d. The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Act and County Fiscal Control Act in the corporate name of the district, signed by the chairman and secretary of the school committee, sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for interest and principal shall be levied and collected as provided in subsection c above for the levy and collection of local taxes.

e. The committee shall have the same power to call and hold elections to ascertain the will of the voters of the district upon the question of increasing the local tax levy to a maximum rate of fifty cents (50c) on the one hundred dollars (\$100.00) valuation of taxable property as it has in the case of bond elections. But local tax elections called and held in such joint districts shall be held under the general provisions of this article governing local tax elections, except

that the district committee is hereby granted the powers of county boards of education and boards of commissioners as to local tax elections.

f. The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Building Funds or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount is to be repaid by the district from district funds.

g. All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

h. The county board of education and county superintendent of public instruction of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts subject only to the limitations of this section.

i. It shall be the duty of the committee of the joint school district to prepare a budget in accordance with the law requiring budgets. The said budget, which shall show the proportionate part of the expenses to be contributed by each county, the several parts to be ascertained on the basis of the proportions of the total district school census living in each respective county, shall be filed by the committee with the county board of education of each county, and it shall be the duty of each board, if it approves the district budget, to incorporate it in the county budget to be submitted to the commissioners each year. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

j. All districts formed before the ratification of this amendment under the provisions of section two hundred and thirty-two, chapter one hundred and thirty-six, Public Laws of one thousand nine hundred and twenty-three, and all districts incorporated before the ratification of this amendment, under the provisions of section two hundred and thirty-three of said chapter, are hereby authorized and empowered to exercise all the powers and privileges conferred by this section as amended. (1923, c. 136, s. 232; C. S., s. 5651; 1924, c. 32.)

Editor's Note. — The 1924 amendment rewrote this section.

§ 115-198. District already created out of portion of two or more counties.—Districts that have already been created out of portions of two or more counties may be incorporated in the following manner: Upon petition of the county board of education of each county, calling for an election, the commissioners of each county shall call an election which shall be conducted in all respects as an election for voting local taxes. The ballots to be used in said election shall have written or printed thereon the words, "For incorporation," and, "Against incorporation." If a majority of those who shall vote thereon in the portion in each county shall cast their ballots for incorporation, the district is thereby incorporated and shall possess all the authority of incorporated districts

as provided in this article. (1923, c. 136, s. 233; C. S., s. 5652; 1949, c. 918, s. 6.)

Editor's Note.—Prior to the 1949 amendment this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote." See 27 N. C. Law Rev. 454.

ARTICLE 23.

Special School Taxing Districts.

§ 115-199. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

Cross References.—See §§ 115-192 and 115-204. For definition of district, see § 115-9.

§ 115-200. School taxing districts created.—The following territorial divisions of a county are hereby declared to be special school taxing districts in which special school taxes may be voted as hereinafter provided: (1) A township; (2) two or more contiguous or consecutive districts, all of which may be embraced within one common boundary; (3) two or more contiguous or consecutive townships, all of which may be embraced within one common boundary; (4) one or more districts and one or more townships contiguous, all of which may be embraced within one common boundary, and (5) the entire county excluding one or more townships or one or more special charter districts. (1923, c. 136, s. 234; C. S., s. 5655.)

Editor's Note.—The cases which follow in this note, in the majority of instances, are constructions of § 5526 of Volume II of the Consolidated Statutes, the substance of which is scattered throughout this article. It must be borne in mind, however, that the School Machinery Act, G. S. 115-347 through 115-382, has in many particulars revised the school system which was in effect at the time this article was enacted.

Applicability to Existing Tax Districts.—The application of the provisions of C. S., § 5526, [incorporated throughout the various sections of this article] to the formation of new local school tax districts without regard to township lines, etc., refers primarily to instances where new districts are created or formed, as therein prescribed, out of territory exclusive of special tax districts, or out of territory having the same status throughout its entirety, in relation to the then existing school tax or taxes, so as to give every voter a fair chance, uninfluenced by other considerations, to declare with his ballot whether or not he wishes to be taxed for the creation

and maintenance of the district proposed. *Perry v. Commissioners*, 183 N. C. 387, 112 S. E. 6 (1922).

Separate Vote in Nontax Territory.—See *Hicks v. Board*, 183 N. C. 394, 112 S. E. 1 (1922); *Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924).

Form of Ballot Directory.—Under a statute which sets out a form of ballot to be used at an election, the use of such form is directory and not mandatory, unless the statute so declares, this matter being within the discretionary power of the legislature. *Riddle v. Cumberland County*, 180 N. C. 321, 104 S. E. 662 (1920).

The failure to use forms prescribed by this section will not render the election invalid when a free and fair opportunity has been afforded the voters therein to express their will at the polls. *Riddle v. Cumberland County*, 180 N. C. 321, 104 S. E. 662 (1920).

Cited in *Plott v. Board*, 187 N. C. 125, 121 S. E. 190 (1924); *Forester v. North Wilkesboro*, 206 N. C. 347, 174 S. E. 112 (1934).

§ 115-201. Boundary lines.—The county board of education, after ascertaining in what special school taxing district it is desirable to levy a special local

tax, to supplement the nine months' school term, shall define or describe the boundary lines so as to include the territorial divisions embracing only the special school taxing district in which a special school tax election for schools is to be called, and to exclude all other territory. The boundary lines of the special school taxing district, having been defined and recorded on the minutes of the board of education, a special school tax election may be held as hereinafter provided to equalize school advantages within the special school taxing district. (1923, c. 136, s. 235; C. S., s. 5656; 1943, c. 255, s. 2.)

Editor's Note. — The 1943 amendment increased the school term from eight to nine months.

§ 115-202. Petition for an election.—The petition for an election in a special school taxing district shall be made as follows: The governing school boards of at least a majority of the school districts within the special school taxing district shall indorse the petition, and it shall be approved by the county board of education. Said petition shall state the maximum rate of tax to be voted on, which rate shall not exceed fifty cents (50c) on the one hundred dollars (\$100.00) valuation of all property, real and personal: Provided, however, that when a special school taxing district created in accordance with the provision of this article includes or embraces two or more school districts having indebtedness incurred for the erection of school buildings, the maximum rate of fifty cents (50c) specified in this section may be exceeded by an additional rate necessary to take care of the combined aforesaid indebtedness of the several districts incurred for the erection of such school buildings. (1923, c. 136, s. 236; C. S., s. 5657; 1927, c. 37.)

Editor's Note. — The 1927 amendment added the proviso in the last part of the section providing for exceeding the specified rate.

Form of Petition. — The character of

the petition is not specifically set forth in this article, but the same is manifestly provided for and controlled by § 115-186. *Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924).

§ 115-203. The election.—Whenever a petition properly indorsed and approved is presented to the board of county commissioners, said board shall call an election in said special school taxing district and fix a date for holding the same. The rules governing the election, the levy and collection of taxes, and the frequency of elections in a special school taxing district shall be the same as rules governing elections, the levy and collection of taxes, and the frequency of elections as provided in article 22. (1923, c. 136, s. 237; C. S., s. 5658.)

Notice of Election.—The requirements of this section as to the first publication in a newspaper, etc., provided in § 115-188, Art. 22, and the giving of the specified time are mandatory if they affect the merits of the election, and directory if they do not. *Flake v. Board*, 192 N. C. 590, 135 S. E. 467 (1926). This case presents splendid illustrations of variations from the terms of the statute which do not affect the mer-

its.—Ed. Note.

Restriction of Boundaries. — In holding an election under this article, the authorities are restricted to districts having established or recognized boundaries, such as a school district or township, or contiguous school districts or townships. *Blue v. Board*, 187 N. C. 431, 122 S. E. 19 (1924). But see note to § 115-192.

§ 115-204. Special school taxing districts.—If a majority of the qualified electors voting in the special school taxing district shall vote in favor of the special school tax, then it shall operate to repeal all school taxes theretofore voted in any local tax district located within said special school taxing district, except such taxes as may have been voted in said local tax district to pay the interest on bonds and to retire bonds outstanding. But the county board of education shall have the authority to assume all indebtedness, bonded and otherwise, of said local tax district and pay all or a part of the interest and installments out of the revenue derived from the rate voted in the special school taxing district: Pro-

vided, the revenue is sufficient to equalize educational advantages and pay all or a part of the interest and installments on said bonds. (1923, c. 136, s. 238; C. S., s. 5659; 1949, c. 1033, s. 1.)

Editor's Note. — The 1949 amendment inserted the word "voting" in the first sentence. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

Editor's Note.—See *Sparkman v. Board*, 187 N. C. 241, 121 S. E. 531 (1924).

Cited in *Flake v. Board*, 192 N. C. 590, 135 S. E. 467 (1926).

Right of Each District to Vote Sepa-

§ 115-205. Organization of the schools in special school taxing districts.—The county board of education is hereby authorized to organize the schools in a special school taxing district after a special school tax has been voted, in such a way as to equalize educational opportunities within said district. (1923, c. 136, s. 239; C. S., s. 5660.)

ARTICLE 24.

County Tax for Supplement in Which Part of Local Taxes May Be Retained.

§ 115-206. Purpose of re-enactment.—The re-enactment in this code of the several sections in this article shall not have the effect of re-enacting any of said sections which have been repealed by the School Machinery Acts of 1933, 1935, 1937 and 1939, and said sections are re-enacted in this code only to the extent and for the purposes required by the several School Machinery Acts above referred to.

§ 115-207. Election upon petition of county board of education.—Upon the petition of the county board of education of any county, the county commissioners shall order an election to be held in the county to ascertain the will of the people whether there shall be levied on all taxable property and polls in the county a special county tax, not to exceed fifty cents (50c) on the one hundred dollars (\$100.00) valuation of property, to supplement the nine months' school fund. (1923, c. 136, s. 242; C. S., s. 5663; 1943, c. 255, s. 2.)

Editor's Note. — The 1943 amendment increased the school term from eight to nine months.

N. C. 771, 140 S. E. 740 (1927); *Forester v. North Wilkesboro*, 206 N. C. 347, 174 S. E. 112 (1934).

Cited in *Young v. Commissioners*, 194

§ 115-208. Rules governing election.—The election shall be conducted for the county as nearly as may be under the "Rules Governing Elections for Local Taxes" as provided in this subchapter. (1923, c. 136, s. 243; C. S., s. 5664.)

§ 115-209. Maximum tax levy.—In the event that a majority of the qualified voters voting at said election shall vote in favor of a special county tax, said tax shall be in addition to all taxes theretofore voted in any local tax district except as provided in § 115-210. The maximum rate voted shall be annually levied and collected each year in the same manner and at the same time as other taxes of the county are levied and collected, unless the county board of education shall petition for a lower rate. In that event the county commissioners shall levy the rate requested. (1923, c. 136, s. 244; C. S., s. 5665; 1949, c. 1033, s. 1.)

Editor's Note. — The 1949 amendment inserted the word "voting" in the first

sentence. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 115-210. The rate in local tax districts.—Whenever the maximum special county tax rate levied or to be levied under the provisions of this article is less than fifty cents (50c), each local tax or special school taxing district shall have the authority to levy an additional rate, not in excess of the local tax rate voted in the district.

All indebtedness, bonded or otherwise, of said district or districts may be assumed by the county board of education; and such indebtedness, if assumed

by the county board of education, shall be paid out of the special county tax levied under the provisions of this article. (1923, c. 136, s. 245; C. S., s. 5666; 1925, c. 180, s. 2; 1933, c. 299.)

Editor's Note. — The 1925 amendment deleted a former provision at the end of the first paragraph limiting the total special tax to not exceeding fifty cents on the hundred dollars, except in case where the tax was for bonds or other such indebtedness which remained an obligation against the district.

§ 115-211. **Subsequent elections upon failure of first.**—In case a majority of qualified voters of said election in any county shall fail to vote for said special county tax, on petition of a majority of the members of the county board of education of the county, the county commissioners may, after six months, order another election in the same manner and under the same rules governing elections for local taxes. (1923, c. 136, s. 246; C. S., s. 5667.)

§ 115-212. **Payment of election expenses.**—The expenses of holding said election shall be paid out of the school fund of the county. (1923, c. 136, s. 247; C. S., s. 5668.)

ARTICLE 25.

Legal Attendance of Pupils in School Districts.

§ 115-213. **Children residing in a school district shall have the advantage of the public school.**—The following persons residing in local tax or special school taxing districts shall be entitled to all the privileges and advantages of the public schools of said district or districts unless removed from school for cause:

(a) All residents of the district who have not completed the prescribed course for graduation in the high school.

(b) All children whose parents have recently moved into the district for the purpose of making their legal residence in the same.

(c) Any child or children living with either the father or the mother or guardian who has made his or her permanent home within the district.

(d) Any child received into the home of any person residing in the district as a member of the family, who receives board and other support free of cost. (1923, c. 136, s. 240; C. S., s. 5661.)

§ 115-214. **Credits on tuition to nonresidents whose children attend in district.**—Any parent or person in loco parentis residing outside of any local tax or special school taxing district, and owning property within said district, whose child, children, or wards shall attend school in said district, shall be entitled to receive as a credit on the tuition of said child, children, or wards the amount of special school taxes paid on said property. The county board of education may arrange with any such district to send any child or children residing in the county to the school in such district, if they are without adequate educational advantages, for the nine months' term, and to pay the actual cost of the instruction of the children, including the appropriations from the nine months' school fund. (1923, c. 136, s. 241; C. S., s. 5662; 1943, c. 255, s. 2.)

Cross Reference.—As to power of the

State Board of Education (successor to the State School Commission, 1943, c. 721) to transfer children from one district to another without the payment of tuition,

see § 115-352.

Editor's Note. — The 1943 amendment substituted "nine" for "eight" in the second sentence.

SUBCHAPTER IX. BONDS AND LOANS
FOR BUILDING SCHOOLHOUSES.

ARTICLE 26.

*Funding or Refunding Loans from State Literary
and Special Building Funds.*

§ 115-215. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by local government commission.—In any case where a loan has heretofore been made from the State Literary Fund or from any special building fund of the State to the county board of education of a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the local government commission. (1935, c. 399, s. 1.)

Editor's Note.—For act validating notes evidencing loans from special building funds, see Session Laws 1945, c. 404.

§ 115-216. Issuance of bonds as part of general refunding plan.—In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligations to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1935, c. 399, s. 2.)

ARTICLE 27.

Collection of Amounts Due State Literary and Revolving Funds.

§ 115-217. Collecting delinquent amounts due by counties; offsetting amounts due counties on account of road contracts.—In all instances where any sum or amount is due from any county or board of education or school unit therein to the State or to the Literary Fund or to the revolving fund set up by the General Assembly providing loans for the construction of school buildings, and where any sum or amount is payable to such county by reason of any contract made on behalf of the State Highway Commission or its successor, the State Highway and Public Works Commission, for loans made to such Commission by such county in behalf of roads, it shall be competent and lawful to offset the amount due such county on account of any contract made with the State Highway Commission or its successor, the State Highway and Public Works Commission, not assigned prior to the passage of this article, by the amount due by such county or board of education or school unit in said county to the State or to the Literary Fund or the revolving fund set up by the General Assembly providing loans for construction of school buildings. (1935, c. 411, s. 1.)

§ 115-218. Crediting sums due counties for road loans.—If the amount due such county on account of loans made to the State Highway Commission or its successor, the State Highway and Public Works Commission, and not assigned prior to the passage of this article, is insufficient to pay the amount

due the State or the Literary Fund or to the revolving fund by such county, then the amount due such county on account of loans to the Highway Commission shall be credited on the amount due by such county to the State or Literary Fund or revolving fund. (1935, c. 411, s. 2.)

§ 115-219. Provisions of article to be observed by State officers.—The Treasurer and other officers of the State charged with the duty of disbursing any funds by reason of such contract between the State Highway Commission or the State Highway and Public Works Commission already made or hereafter to be made are required to observe the provisions of § 115-218 and shall not issue or authorize issuance of any voucher contrary thereto. (1935, c. 411, s. 3.)

ARTICLE 28.

Loans from State Literary Fund.

§ 115-220. Loans by State Board from State Literary Fund.—The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may make loans from the State Literary Fund to the county board of education of any county for the building and improving of public schoolhouses or dormitories for rural high schools and teacherages in such county; but no warrant for the expenditure of money for such purposes shall be issued by the Auditor except upon the order of the State Superintendent of Public Instruction, with the approval of the State Board of Education. (1923, c. 136, s. 273; C. S., s. 5683.)

Cross Reference. — As to authority to sell notes evidencing loans from State Literary Fund, see § 135-7.1.

Editor's Note.—For act validating notes evidencing loans from Literary Fund, see Session Laws 1945, c. 404.

§ 115-221. Terms of loans.—Loans made under the provisions of this article shall be payable in ten installments, shall bear interest at four per centum, payable annually, and shall be evidenced by the note of the county board of education, executed by the chairman and secretary thereof, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county board on the tenth day of February after the tenth day of August subsequent to the making of such loan and the remaining installments, together with the interest, shall be paid, one each year, on the tenth day of February of each subsequent year till all shall have been paid. (1923, c. 136, s. 274; C. S., s. 5684.)

§ 115-222. How secured and paid.—At the January meeting of the county board of education, before any installment shall be due on the next tenth day of February, the county board shall set apart out of the school funds an amount sufficient to pay such installments and interest to be due, and shall issue its order upon the treasurer of the county school fund therefor, who, prior to the tenth day of February, shall pay over to the State Treasurer the amount then due. And any amount loaned under the provisions of this law shall be a lien upon the total school funds of such county, in whatsoever hands such funds may be; and upon failure to pay any installment or interest, or part of either, when due, the State Treasurer may deduct a sufficient amount for the payment of the same out of any fund due any county from any State appropriation for public schools, or he may bring action against the county board of education of such county, any person in whose possession may be any part of the school funds of the county, and the tax collector of such county; and if the amount of school funds then on hand be insufficient to pay in full the sum so due, then the State Treasurer shall be entitled to an order directing the tax collector of such county to pay over to the State Treasurer all moneys collected for school purposes until such debt and interest shall have been paid: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds

issued by the authorities of any county or any district. (1923, c. 136, s. 275; C. S., s. 5685.)

§ 115-223. Loans by county boards to school districts.—The county board of education, from any sum borrowed under the provisions of this article, may make loans only to districts that have already levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in ten annual installments, with interest thereon at four per centum, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by the authorities of the district. (1923, c. 136, s. 276; C. S., s. 5686.)

§ 115-224. Appropriation from loan fund for free plans and inspection of school buildings.—The State Board of Education may annually set aside and use out of the funds accruing to the interest of said State Loan Fund a sum not exceeding seventeen thousand five hundred dollars (\$17,500.00), to be used for providing plans for modern school buildings to be furnished free of charge to districts, for providing proper inspection of school buildings and the use of State funds, and for such other purposes as said Board may determine, to secure the erection of a better type of school building and better administration of said State Loan Fund. (1923, c. 136, s. 277; C. S., s. 5687; 1947, c. 636.)

Editor's Note. — The 1947 amendment increased the amount from \$12,000 to \$17,500.

ARTICLE 29.

Relending Certain Funds.

§ 115-225. Payment of loans before maturity; relending.—For the purpose of providing funds to be loaned to the counties of the State for erecting school buildings and providing facilities for maintaining the school term, the State Board of Education is authorized to accept payment from any district and/or county for the full amount of loans due the State on loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven before the maturity of such loans.

The State Board of Education is authorized to relend any payments made by counties to counties for the period that the loans would have run had they not been paid before maturity, and at the same rate of interest.

The State Board of Education shall follow the laws, rules and regulations set up for making loans from the special building funds of one thousand nine hundred twenty-one, one thousand nine hundred twenty-three, one thousand nine hundred twenty-five and one thousand nine hundred twenty-seven in lending money made available by the payment of loans from the said funds before the maturity date thereof.

In making loans from funds made available from payments on the special

building funds before maturity, the State Board of Education shall be governed by laws and amendments to the Constitution enlarging or restricting the borrowing power of counties and/or municipalities. (1937, c. 115, ss. 1-4.)

ARTICLE 30.

State Bond Sinking Fund Act.

§ 115-226. **Title.**—This article shall be known and may be cited as “The State School Bond Sinking Fund Act.” (1927, c. 177, s. 1.)

§ 115-227. **State Treasurer to set aside moneys.**—From all moneys heretofore or hereafter received in repayment of the principal of or in payment of interest upon loans from the special building funds created under each of the acts known as chapter 147, Public Laws of 1921, §§ 278-284, chapter 136, Public Laws of 1923, and chapter 201, Public Laws of 1925, the State Treasurer shall from time to time set aside moneys sufficient for paying interest upon the bonds of the State issued under the same act, and shall use the moneys so set aside in paying such interest when due. (1927, c. 177, s. 2.)

§ 115-228. **Remainder declared sinking fund.**—The remainder of such repayments of principal and payments of interest under each of said acts, except repayments of the first four annual installments of principal of the original loans made under said chapter 201, Public Laws of 1925, is hereby declared to constitute a sinking fund, and shall be kept as a separate fund and used for the payment of the principal of the bonds of the State issued under the same act, as such principal shall fall due. (1927, c. 177, s. 3.)

§ 115-229. **Duty of State Sinking Fund Commission.**—It shall be the duty of the State Sinking Fund Commission to provide for the custody, investment and application of the three sinking funds hereby created. All the provisions of law now or hereafter in force in respect of the custody, investment and application of State sinking funds by said Commission including penalties, shall apply to and govern said Commission in the custody, investment and application of the said three funds. (1927, c. 177, s. 4.)

§ 115-230. **State Treasurer to have custody of notes and evidences of debt.**—The State Treasurer shall have the custody of all notes and other evidences of indebtedness on account of such loans, and it shall be the duty of each and every officer or person now having the custody or disposal of any such notes or evidences of indebtedness to deliver the same to the State Treasurer. (1927, c. 177, s. 5.)

§ 115-231. **Obligation of Treasurer's bond.**—The official bond of the State Treasurer shall cover each and all of his duties under the Act. (1927, c. 177, s. 6.)

SUBCHAPTER X. BONDS TO PAY OUTSTANDING INDEBTEDNESS OF SPECIAL CHARTER SCHOOL DISTRICTS.

ARTICLE 31.

Issuance and Levy of Tax for Payment.

§ 115-232. **Issued under supervision of Local Government Commission.**—The governing body of any special charter school district may, with the approval of the Local Government Commission, issue bonds of the district to such an amount as may be required to pay indebtedness, other than bonded indebtedness, of the district heretofore incurred and now outstanding whether represented by the original obligation or by renewals, or otherwise. The issue and sale of

such bonds shall be subject to the provisions of the Local Government Act relating to the issue and sale of public securities, § 159-1 et seq. (1931, c. 180, s. 1.)

§ 115-233. **Special tax to be levied and collected.**—The authorities charged by law with the duty of levying and collecting school taxes in each special charter school district that shall have issued bonds hereunder, shall annually levy and collect, in addition to all other taxes, a special tax sufficient to meet the interest and principal of all bonds issued by the said district under the authority hereof. (1931, c. 180, s. 2.)

SUBCHAPTER XI. SCHOOL DISTRICT REFUNDING AND FUNDING BONDS.

ARTICLE 32.

Issuance and Levy of Tax for Payment.

§ 115-234. **“School district” defined.**—As used in this article the term “school district” shall be deemed to include each special school taxing district, local tax district and special charter district by which or on behalf of which bonds have heretofore been issued and are now outstanding. (1935, c. 450, s. 1.)

§ 115-235. **Continuance of school districts till bonds paid.**—Notwithstanding the provisions of any law heretofore enacted or enacted hereafter at the present regular session of the General Assembly which affect the continued existence of school districts or the levy of taxes therein for the payment of bonds, each such school district shall continue in existence with the boundaries heretofore established until all bonds thereof now outstanding or bonds issued to refund the same, together with the interest thereon, shall be paid. (1935, c. 450, s. 2.)

§ 115-236. **Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.**—The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of §§ 159-59 to 159-62, and the Local Government Act § 159-1 et seq. and acts amendatory thereof and supplemental thereto. The tax levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1935, c. 450, s. 3.)

§ 115-237. **Issuance of bonds by cities and towns; debt statement; tax levy for repayment.**—In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that Act, and the provisions of the Local Government Act and acts amendatory thereof and supplemental thereto, except in the following respects:

(a) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

(b) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, §§ 160-379 and 160-383 of the Municipal Finance Act, as amended, shall be read and understood as if they contained no requirements in respect to such matters.

(c) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1937, c. 126; 1941, c. 148.)

SUBCHAPTER XII. SCHOOL DISTRICT TAXES AND SINKING FUNDS.

ARTICLE 33.

Transfer to County Treasurer.

§ 115-238. Taxes collected in school districts where bonds assumed by county directed to county treasurer.—In all cases in which the bonds of special school districts have been or may hereafter be assumed by the county in which such district is located, all taxes levied and collected for the purpose of paying the interest upon said bonds and creating a sinking fund for the retirement of said bonds shall be paid to the county treasurer by the sheriff or tax collector. (1935, c. 242, s. 1.)

§ 115-239. Allocation to district bonds of taxes collected.—If a uniform debt service tax is levied and collected by the county in which school district bonds are now outstanding and have been assumed by the county, all of said tax so levied and collected shall be paid to the county treasurer and the county treasurer shall allocate to each issue of school district bonds its proportionate part of the tax so levied and collected each year. (1935, c. 242, s. 2.)

§ 115-240. All sinking fund moneys and securities likewise directed to county treasurers.—In all cases where school district bonds have been assumed or may hereafter be assumed by the county in which district is located any and all moneys and securities held by the treasurer, trustee or committee of such district or sinking fund commissioner such officer is authorized to transfer any and all moneys and securities belonging to such sinking fund account to the county treasurer of such county and upon the transfer of such funds and securities and a proper accounting therefor such district treasurer, trustee, committee or sinking fund commissioner shall be discharged from further responsibility for the administration of and accounting for such sinking funds. (1935, c. 242, s. 3.)

Local Modification.—Richmond: 1935, c. 242, § 4.

Legislature May Change Custodian of Fund.—Ordinarily the county treasurer is the proper custodian of all sinking fund securities, including school sinking funds and securities held for the retirement of

term bonds where the county has assumed the payment of such bonds, but the General Assembly may designate or change the custodian of sinking fund securities. *Johnson v. Marrow*, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

SUBCHAPTER XIII. VOCATIONAL EDUCATION.

ARTICLE 34.

Duties, Powers and Responsibilities of State Board of Education.

§ 115-241. Acceptance of benefits of Federal Vocational Education Act.—The State of North Carolina hereby accepts all of the provisions and benefits of an act passed by the Senate and House of Representatives of the United States in Congress assembled, entitled "An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects, and to appropriate money and regulate its expenditure", approved February twenty-third, nineteen hundred and seventeen. (1923, c. 136, s. 285; C. S., s. 5695.)

Editor's Note.—As to trade school for veterans, see Session Laws 1947, c. 839.

§ 115-242: Repealed by Session Laws 1943, c. 721.

Editor's Note. — The repealed section created a State Board for Vocational Education consisting of four members. The Board was abolished by Session Laws 1943, c. 721, § 1, and its property, powers, functions and duties passed to the State Board of Education. See § 115-19.1.

Session Laws 1943, c. 721, § 5, which

amended this subchapter by striking out the words "State Board for Vocational Education" wherever they appeared and inserting in lieu thereof the words "State Board of Education," provided: "Any reference in any statute to the State Board for Vocational Education shall be deemed a reference to the State Board of Education."

§ 115-243. Powers and duties of Board.—The State Board of Education shall have all necessary authority to co-operate with the federal board for vocational education in the administration of the Federal Vocational Educational Act, to administer any legislation pursuant thereto enacted by the State of North Carolina, and to administer the funds provided by the federal government and the State of North Carolina for the promotion of vocational education in agricultural subjects, trade and industrial subjects and home economics subjects. It shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education of the State of North Carolina, and to provide for the preparation of teachers in such subjects. Subject to the approval of the Budget Bureau, it shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the Federal Act and this article for the State of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the result of such investigations, and to issue other publications as seem necessary to the Board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to co-operate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for the teachers, directors, and supervisors of such subjects; to co-operate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers. (1923, c. 136, s. 287; C. S., s. 5697; 1943, c. 721, s. 5.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Board for Vocational Education."

§ 115-244. State Superintendent to enforce article.—The State Superintendent of Public Instruction shall serve as executive officer of the State Board of Education, and shall designate, by and with the advice and consent of the Board, such assistants as may be necessary to properly carry out the provisions of this article. The State Superintendent shall also carry into effect such rules and regulations as the Board may adopt, and shall prepare such reports concerning the condition of vocational education in the State as the Board may require. (1923, c. 136, s. 288; C. S., s. 5698; 1943, c. 721, s. 5.)

Editor's Note.—The 1943 amendment for "State Board for Vocational Education" substituted "State Board of Education" tion."

§ 115-245. State appropriation to equal federal appropriation.—The State of North Carolina appropriates out of the State public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the State of North Carolina from the federal treasury, under the provisions of the Smith-Hughes Act and the Industrial Rehabilitation Act. Provided, that only such portion of above State appropriation shall be used as may be absolutely necessary to carry on the work outlined in this article and to meet the federal requirements. (1923, c. 136, s. 289; C. S., s. 5699.)

§ 115-246. State Treasurer authorized to receive and disburse vocational education fund.—The State Treasurer is hereby designated and appointed custodian of all moneys received by the State from the appropriation made by said act of Congress or any other acts of Congress passed subsequent thereto, and he is authorized to receive and to provide for the proper custody of the same and to make disbursement thereof in the manner provided for in said acts and for the purpose therein specified. He shall also pay out moneys appropriated by the State of North Carolina for the purpose of carrying out the provisions of this article upon the order of the State Board of Education. (1923, c. 136, s. 290; C. S., s. 5700; 1941, c. 277; 1943, c. 721, s. 5.)

Editor's Note.—The 1941 amendment the 1943 amendment substituted "State inserted the words "or any other acts of Board of Education" for "State Board for Congress passed subsequent thereto." And Vocational Education."

§ 115-247. Co-operation of county authorities with State Board; funds.—The county board of education, board of county commissioners, or the board of trustees of any city administrative unit may co-operate with the State Board of Education in the establishment of vocational schools or classes giving instruction in agricultural subjects, or trade or industrial subjects, or in home economics subjects, or all three subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that nothing in this article shall be construed to repeal any appropriations heretofore made by any of said boards for said purposes. (1923, c. 136, s. 291; C. S., s. 5701; 1943, c. 721, s. 5.)

Editor's Note.—The 1943 amendment for "State Board for Vocational Education" substituted "State Board of Education" tion."

§ 115-247.1. Vocational agricultural high schools authorized to acquire lands for forest study.—1. With the approval of the State Board for Vocational Education and the county superintendent of public instruction, the principal of any vocational agricultural high school is hereby authorized and empowered to acquire by gift, purchase or lease for not less than twenty years, a parcel of woodland or open land suitable for forest planting, or comprising both types of land; such parcel of land to contain not more than twenty acres.

2. Each deed to such land shall be made to "The County Board of Education" of the county in which the school concerned is located and the title shall be examined and approved by the county attorney.

3. Any school forest thus acquired shall be placed under the management of the Department of Vocational Agriculture of the school, to be handled in accord-

ance with plans approved by some available publicly employed forester. (1945, c. 1035.)

§ 115-247.2. Use of unexpended funds from sale of certain school bonds, by county authorities, for vocational education.—The boards of county commissioners and the county boards of education of the State now having on hand unexpended funds derived from the sale of school bonds issued without a vote of the people subsequent to August 1st, 1946, and prior to December 1st, 1946, are authorized in their discretion to expend such funds for the erection, construction, and equipping of vocational educational buildings for the teaching of vocational agriculture and allied subjects. Such buildings may be erected and constructed at such place or places in the county as the county board of education of such county may designate, notwithstanding that the bond ordinance adopted, authorizing the issuance of such bonds, may have designated the place or places for such new additional school buildings to be erected and equipped. (1947, c. 791.)

§ 115-248. Report to Governor.—The State Board of Education shall make a report annually to the Governor, setting forth conditions of vocational education in the State, a list of the schools to which federal and State aid have been given, and a detailed statement of the expenditures of federal funds and State funds provided for in this article. (1923, c. 136, s. 292; C. S., s. 5702; 1943, c. 721, s. 5.)

Editor's Note.—The 1943 amendment for "State Board for Vocational Education" substituted "State Board of Education" tion."

ARTICLE 34A.

Area Vocational Schools.

§ 115-248.1. Commission to study needs for area vocational schools.—The Governor of North Carolina is hereby authorized to appoint a commission of eight persons, one of whom shall be designated as chairman. The State Director of Vocational Education shall serve as ex officio member of said commission. The said commission shall investigate the feasibility of establishing one or more area vocational schools in North Carolina. (1945, c. 1011, s. 1.)

§ 115-248.2. Commission to report its findings and recommendations to Governor.—The report of the commission shall include findings of fact as to the necessity of such school or schools, the probable cost of the establishment and maintenance; the availability of funds from all sources; the types of courses of study needed and recommended; and all other information which will be helpful to the Governor in determining whether or not such school or schools shall be established. The commission shall from time to time as it makes progress file its report with the Governor of North Carolina, setting forth its findings, conclusions, and recommendations. (1945, c. 1011, s. 2.)

§ 115-248.3. Establishment of needed schools authorized; authority of State Board of Education.—If, from the reports filed by the commission, the Governor finds that the need for such school or schools exists, he, in his discretion, may then authorize the State Board of Education acting as a State Board for Vocational Education, to establish one or more such schools in accordance with the recommendations and conclusions of the commission. For this purpose, the State Board of Education acting as a State Board for Vocational Education shall use such funds as the Governor and Council may make available from the vocational education funds, federal grants, private donations, or gifts of land, buildings and equipment which may be available for the establishment, operation and maintenance of said school or schools. The State Board of Education acting as a State Board for Vocational Education, shall promulgate

needful rules and regulations to establish and operate such school or schools in accordance with the State plans for vocational education, and may utilize the already established administrative units or may establish other administrative units as in its judgment seem necessary for meeting the needs of the situation. When such school or schools may be established, the State Board of Education acting as a State Board for Vocational Education shall operate and manage the said school or schools, employ necessary personnel, fix salaries, and do all things necessary and needful to operate the said school or schools. (1945, c. 1011, s. 3.)

ARTICLE 35.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ 115-249. **Acceptance of federal aid.**—The State of North Carolina hereby accepts all of the provisions and benefits of an act passed by the Senate and House of Representatives of the United States in Congress assembled to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to civil employment, approved June second, one thousand nine hundred twenty. (1923, c. 136, s. 315; C. S., s. 5725.)

§ 115-250. **Co-operation; objects and plans; compensation of officials; expenses; publications.**—The State Board of Education shall have all necessary authority to co-operate with the Federal Board for Vocational Education in the administration of the act of Congress providing for the vocational rehabilitation of persons injured in industry and otherwise; to administer any legislation pursuant thereto enacted by the State of North Carolina; and to administer the funds provided by the federal government and the State of North Carolina under the provisions of § 115-245. It shall have full authority to formulate plans for the promotion of vocational rehabilitation. Subject to the approval of the Budget Bureau, the Board shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the Federal Act and this article for the State of North Carolina; and to pay such compensation and other expenses of administration as are necessary from funds appropriated under this law. It shall have authority to make studies and investigations relating to vocational rehabilitation; to publish the result of such investigations and to issue other publications as seem necessary to the Board; to promote and aid in the establishment of schools, departments, or classes giving instruction in vocational subjects for rehabilitation purposes; and to prescribe qualifications for the teachers, directors, and supervisors of such subjects. (1923, c. 136, s. 316; C. S., s. 5726; 1943, c. 721, s. 5.)

Editor's Note.—The 1943 amendment substituted "State Board of Education" for "State Board for Vocational Education."

§ 115-251. **State appropriation from State public school fund.**—The State of North Carolina appropriates out of the State public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the State of North Carolina from the federal treasury under an act of Congress to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to civil employment: Provided, that only such portions of the above State appropriation shall be used as may be absolutely necessary to carry on the work outlined in articles thirty-four and thirty-five. (1923, c. 136, s. 317; C. S., s. 5727.)

§ 115-252. **Co-operation with State Board of Health; reports as to persons under treatment.**—The State Board of Health shall, (a) co-operate with the State Board of Education in arranging with all public and private hospitals, clinics, dispensaries, health officers, and practicing physicians, to send to the State Board of Education prompt and complete reports of any persons under

treatment in such hospitals, clinics, dispensaries, or by such physicians or health officers, for any injury or disease that may render them permanently, physically, and vocationally handicapped to such an extent that they are or will be unable to support themselves, and (b) co-operate generally with the State Board of Education in carrying out the provisions of this article. (1923, c. 136, s. 318; C. S., s. 5728; 1943, c. 721, s. 5.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Board for Vocational Education."

§ 115-253. State appropriation.—The State of North Carolina shall appropriate for each fiscal year a necessary amount of money from the State treasury to the State Board of Education for the purpose of assisting worthy persons who enter training under the Federal Vocational Rehabilitation Act: Provided, (1) that this fund shall be used only to pay for the actual living expenses of deserving persons, as determined by investigation of the Board, who have no other means of paying said living expenses; (2) that this fund shall be paid out by the State Treasurer on the order of the State Board of Education; (3) that not to exceed ten dollars per week for not more than twenty weeks, unless an extension of time is granted by the Board, be paid for the maintenance of any one person in training; (4) that the said State Board of Education shall keep an accurate account of all expenditures, showing date, the person to whom paid, for what paid, and the amount of each warrant, and shall make a report of same to the Governor on or before the first of January each year. (1923, c. 136, s. 319; C. S., s. 5729; 1943, c. 721, s. 5.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Board for Vocational Education."

ARTICLE 36.

Textile Training School.

§ 115-254. Commission to investigate suitable site for textile training institute.—The Governor of North Carolina is hereby authorized to appoint a commission composed of seven persons, five of whom shall be experienced textile operators, and two selected at large as to qualifications described by the Governor. The said committee shall investigate the various cities of the Piedmont section of North Carolina for the selection of a site to establish what will later be known as "North Carolina Textile Institute", or some appropriate name to be selected by the commission. (1941, c. 360, s. 1.)

§ 115-255. Chairman of commission; operation of institution by State Board of Education.—The Governor of North Carolina shall be chairman of the above named commission, and the operation and administration of said institution shall be placed in the hands of the State Board of Education or such board as it may appoint or designate as its representative in the administration of said institution. (1941, c. 360, s. 2; 1943, c. 721, s. 5.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Board for Vocational Education."

§ 115-255.1. Creation of board of trustees; members and terms of office; no compensation.—The affairs of the North Carolina Vocational Textile School, created under authority of this article, shall be managed by a board of trustees composed of six members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments

shall be made for periods of four years. In the event of any vacancy on said board, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. (1945, c. 806, s. 1.)

§ 115-255.2. Powers of board.—The said board of trustees shall have the power to take over and receive all of the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said School, and, within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said School, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said School. (1945, c. 806, s. 2.)

§ 115-255.3. When board to begin functioning; succeeds to powers and authority of former board.—The board of trustees appointed under the authority of § 115-255.1 shall begin their term of office on the first day of July, one thousand nine hundred and forty-five, and shall succeed to all the powers and authority of the board created under authority of chapter 360 of the Public Laws of 1941. (1945, c. 806, s. 3.)

§ 115-256. Persons eligible to attend institution; subjects taught.—Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the State of North Carolina: Provided, that out of State students not to exceed ten per cent (10%) of total enrollment may be enrolled when vacancies exist, upon payment of tuition, the amount of the tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the School. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1941, c. 360, s. 3; 1947, c. 843.)

Editor's Note. — The 1947 amendment added the proviso at the end of the first sentence and inserted the second sentence.

§ 115-257. Allocation of funds for erection of buildings; contributions; use of federal funds.—The Governor of North Carolina and the Council of State may allocate a sum not to exceed fifty thousand dollars (\$50,000.00) from the contingency and emergency fund or any other funds available for the purpose of erecting buildings for said institute, and the commission shall be authorized to accept the contributions of land and money from interested persons, and shall be authorized to lease and accept loans from machinery manufacturers for the operation of the plant. Vocational education funds appropriated to the State Board of Education by the federal government and by the General Assembly of North Carolina shall be used for instructional purposes in said institute, according to the rules and regulations governing the expenditure of State funds. (1941, c. 360, s. 4; 1943, c. 721, s. 5.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Board for Vocational Education."

§ 115-257.1. Additional allocation of funds.—The Governor of North Carolina, with the approval of the Council of State, may allocate from the contingency and emergency fund a sum not to exceed seventy-five thousand dollars (\$75,000.00) for the purpose of completing the project, purchasing the necessary machinery and equipment to put the Vocational Textile School in operation. (1943, c. 778.)

ARTICLE 36A.

Vocational Training in Building Trades.

§ 115-257.2. **Use of funds for purchase of building sites and materials.**—Local school administrative units are authorized to use local tax funds or other local funds available for the support of vocational education to purchase suitable building sites on which dwellings or other buildings are to be constructed by vocational building trades classes. Such school administrative units are authorized to use such funds to pay any fees necessary in securing and recording deeds to such property and to purchase all materials needed to complete the construction of buildings by vocational building trades classes: Provided, however, that the cost of materials for any one project shall not exceed \$7,000.00 and not more than one project may be undertaken within one school year. (1951, c. 1007, s. 1.)

Local Modification.—Durham, Guilford, Rockingham, Rutherford: 1951, c. 1007, s. 6½.

§ 115-257.3. **Use of funds for acquiring skilled services.**—Local school administrative units are authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading and landscaping needed in the construction and completion of buildings beyond those which can be supplied by the students in such vocational trades classes. (1951, c. 1007, s. 2.)

§ 115-257.4. **Sale of buildings constructed by building trades classes; disposition of proceeds.**—When any such building is completed, the governing body of the local school administrative unit, upon finding that such building is not needed for public school purposes, shall sell the same at public auction after due advertisement of said property for the period of time and in like manner as to places and publication in newspapers as now prescribed for sales of real estate under deeds of trust and if no raised or increased bid is made within ten (10) days after the date of sale, the chairman and secretary of the governing body of such unit may execute a deed to the purchaser. The proceeds from the sale of such projects may be kept in a revolving fund by said unit to be used in succeeding years to finance similar building projects; provided the governing board of the administrative unit may allocate from the profits from such projects funds to purchase equipment needed by the building trades classes. In case this type of activity is abandoned, the moneys accumulated shall be paid into the school fund of the county or city administrative unit from which the original appropriation was made. After the sale of any such property, as herein provided for, has been had and in the opinion of the governing board the amount offered for the property, either at the first or any subsequent sale, is inadequate, then, upon a finding of such fact by the board, the said board is authorized to reject such bid. (1951, c. 1007, s. 3.)

§ 115-257.5. **Advisory committee on construction of projects.**—Five persons residing within the administrative unit shall be appointed by the governing board of the administrative unit to serve as an advisory committee on the construction of projects described in this article. (1951, c. 1007, s. 4.)

§ 115-257.6. **Approval of advisory committee required.**—No project of a nature described in this article shall be undertaken without the approval of a majority of the advisory committee referred to in § 115-257.5. (1951, c. 1007, s. 5.)

§ 115-257.7. **Current projects not limited or prohibited.**—Nothing in this article shall be construed as limiting or prohibiting any projects now being carried on in vocational departments and utilizing resources or funds not specifically mentioned herein. (1951, c. 1007, s. 6.)

SUBCHAPTER XIV. TEXTBOOKS AND PUBLIC LIBRARIES.

ARTICLE 37.

Textbooks for Elementary Grades.

§ 115-258. **State Board of Education adopts textbooks.**—The State Board of Education is hereby authorized to adopt, for the exclusive use in the public elementary schools of North Carolina, supported wholly or in part out of the public funds, textbooks and publications, including instructional materials, to meet the needs of such schools in each grade and on each subject matter in which instruction is required to be given by law. It shall adopt for a period of five years from a multiple list submitted by the Textbook Commission, as hereinafter provided, two basal primers for the first grade and two basal readers for each of the first three grades, and one basal book or series of books on all other subjects contained in the outline course of study for the elementary grades where a basal book or books are recommended for use: Provided, the State Board of Education may adopt not exceeding three basal books on the subject of North Carolina history and, if such multiple adoption is made, the State Board of Education may by rules and regulations prescribe the manner of use of such books in the public schools of the State: Provided further, the State Board of Education may enter into contract with a publisher for a period less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1923, c. 136, s. 320; C. S., s. 5730; 1933, c. 464, s. 1; 1939, c. 68.)

Cross Reference.—For subsequent statute affecting this article, see § 115-278.1 et seq.

Editor's Note. — The 1933 amendment rewrote the first sentence, and the 1939 amendment inserted the first proviso.

§ 115-259. **Books adopted for an indefinite period.**—At the expiration of the contract now existing between the State Board of Education and the publisher for any particular book or books, the State Board of Education, upon satisfactory agreement with the publisher, may continue the contract for any particular book or books indefinitely; that is, for a period not less than one nor more than five years.

The State Board of Education may, at any time it finds a book unsatisfactory, call for a new report from the Textbook Commission on the subject adopted for an indefinite length of time. Moreover, the Textbook Commission at any time, with the approval of the State Superintendent of Public Instruction, may recommend to the State Board of Education that a given book adopted indefinitely is unsatisfactory or may be greatly improved by the adoption of a new book or books.

In the event that a change of textbooks contracted for for an indefinite length of time is deemed necessary by the State Board of Education or by the Textbook Commission, the publisher shall be given at least three months' notice prior to the first day of May, and at the expiration of which time the State Board of Education is authorized to adopt from a list submitted by the Textbook Commission a new book or books on said subject. Moreover, the publisher of any textbook desiring to end a contract that has been extended indefinitely shall give the State Board of Education at least three months' notice prior to the first day of May. In either event, when it becomes necessary to substitute a new book for an old one on the adopted list, the State Board of Education shall call for new recommendations from the Textbook Commission on that book, and proceed as in the first instance. (1923, c. 136, s. 321; C. S., s. 5731.)

§ 115-260. **Classification of textbooks.**—The textbooks in use in the public schools are hereby divided into two classes: (1) Major subjects, which include readers, arithmetics, language and grammar, history and geography; and (2) all other books on all other subjects shall be considered as minor subjects. (1923, c. 136, s. 322; C. S., s. 5732.)

§ 115-261. **Basal and supplementary books.**—All textbooks to be adopted by the State Board of Education shall be basal books or supplementary books necessary to complete the course of study. (1923, c. 136, s. 322; C. S., s. 5733; 1933, c. 464, s. 2.)

Editor's Note. — The 1933 amendment rewrote this section.

§ 115-262. **Basal books not to be displaced by supplementary.**—The State Board of Education is hereby authorized to select and adopt all supplementary books and instructional material necessary to complete the course of study for all schools. Such supplementary books shall neither displace nor be used to the exclusion of basal books. (1923, c. 136, s. 324; C. S., s. 5734; 1933, c. 464, s. 3.)

Editor's Note.—Prior to the 1933 amendment the county boards of education selected the supplementary books.

§ 115-263: Repealed by Session Laws 1945, c. 707, s. 12.

§ 115-264. **Organization of Commission.**—Immediately after the appointment of the Textbook Commission the Superintendent of Public Instruction shall cause said Textbook Commission to meet in his office and organize by electing a chairman and secretary, and shall adopt such rules and regulations to govern their work as may be deemed necessary, subject to the approval of the State Superintendent of Public Instruction. The work of the Textbook Commission shall then be apportioned among the members, and the rules and regulations governing its work shall be published in the daily papers, and a copy shall be sent to all publishers that may submit bids and samples of books for adoption.

The several members of the Textbook Commission may work independently, seeking information from every legitimate source, but if the members of the Textbook Commission receive information from representatives of book companies they shall keep a record of each such visit and the purpose of the visit. (1923, c. 136, s. 326; C. S., s. 5736.)

§ 115-265: Repealed by Session Laws 1945, c. 707, s. 12.

§ 115-266. **Duties of Commission.**—The Textbook Commission shall first prepare, subject to the approval of the Superintendent of Public Instruction, and publish at the expense of the State, an outline course of study setting forth what subjects shall be taught in each of the elementary grades. It shall give in outline the number of basal and supplementary books on each subject to be used in each grade in accordance with the law.

After the outline course of study has been prepared and published, the Textbook Commission shall then prepare a multiple list of basal books to be submitted to the State Board of Education. The multiple list shall contain not less than four nor more than eight books or series of books on all subjects for each grade. No book shall be included in the multiple list that a majority of the Textbook Commission deems unsuitable, or that does not conform to the outline course of study.

The Textbook Commission shall report whether any of the major subjects containing a series of books may be divided, taking one part from one series and another part from another series of books on the same subject, and the Commission's report in this respect shall be binding on the State Board of Education. (1923, c. 136, s. 328; C. S., s. 5738; 1933, c. 464, s. 4.)

§ 115-267. **State Board of Education makes all contracts.**—(a) The State Board of Education shall make all needful rules and regulations governing the advertisement for bids, when and how prices shall be submitted, when and how sample books for adoption shall be submitted, the nature of the contract to be entered into between the State Board of Education and the publishers, the

nature and kind of bond, if any is necessary, and all other needful rules and regulations governing the adoption of books for all public schools not otherwise specified in this article. After a contract has been entered into between the State Board of Education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, etc., the Attorney General shall bring suit against said company, when requested by the State Board of Education, for such amount as may be sufficient to enforce the contract or to compensate the State because of the loss sustained by a failure to keep this contract. (b) It shall be unlawful for any local distributing agency distributing State-adopted textbooks to charge, or to make any deduction from, the purchase price of such textbooks when returned by the purchaser without having been subjected to use or damage. Any person violating any of the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction fined not less than fifty dollars or imprisoned not more than thirty days. (1923, c. 136, s. 329; C. S., s. 5739; 1925, c. 69; 1933, c. 464, s. 5.)

Editor's Note.—Prior to the 1933 amendments for elementary schools only. It ment this section applied to rules and regulations now applies to all public schools.

§ 115-268. Not more than one major subject to be changed in any one year.—Not more than one major and two minor subjects shall be changed in any one year: Provided, satisfactory arrangements as to prices and distribution may be made. (1923, c. 136, s. 330; C. S., s. 5740.)

§ 115-269. Publishers to register all agents or employees.—Publishers submitting books for adoption shall register in the office of the State Superintendent of Public Instruction all agents or other employees of any kind authorized to represent said company in the State, and this registration list shall be open to the public for inspection. (1923, c. 136, s. 331; C. S., s. 5741.)

§ 115-270. Acquisition of manuscripts for textbooks permitted; publication thereof by State Board of Education.—The said Board of Education is hereby authorized and empowered in its discretion to purchase and/or acquire a manuscript or manuscripts for school textbooks or supplementary books used or to be used in any or all grades of the public schools of North Carolina and to procure the printing and publishing of such books under contract through competitive bids or otherwise as it may in its discretion determine to be for the best interest of the public schools of the State; and if said Board of Education finds that by the acquisition of any such manuscript or manuscripts, and that by the making of any such contract for any such school books, either basal or supplementary, such books can be furnished to the public schools of the State at a price less than the same may be acquired from publishers, then it shall be the duty of said Board of Education to acquire such manuscripts and cause the same to be published and said books to be distributed in accordance with such rules and regulations and under such terms and conditions as it may deem advisable, having due regard to the standard of the school books so published, after taking into consideration the substance of such books and their adaptability for use in the schools of the State. (1933, c. 464, s. 6.)

§ 115-271. Contracts for distribution of textbooks through depositories or a State agency.—The State Board of Education is authorized and empowered to make and enter into all such contracts as may be necessary to provide for the proper distribution of textbooks either through a depository or depositories, or through the State Division of Purchase and Contract or other State agency, utilizing county boards of education or city boards of trustees, if found feasible, for local distribution, as to it may seem advisable; and is further authorized and empowered to make all needed rules, regulations, and contracts governing the disposition, sale, and return of school books as are not disposed of to the patrons of the schools, and to determine the nature of the contract or contracts to be entered into between the State Board of Education and the pub-

lisher or publishers, for the distribution of school textbooks adopted by it or in use in any of the public schools of the State. It may also determine the nature and kind of bond, if necessary, to be given by any depository or other agency carrying out the terms of this article, to the end that school textbooks shall be delivered to the patrons of the schools at the lowest possible net cost. (1933, c. 464, s. 7.)

ARTICLE 38.

Textbooks for High Schools.

§ 115-272. **State Board of Education may adopt textbooks.**—The State Board of Education is hereby authorized to adopt textbooks for the use in all public high schools of the State, supported in whole or in part out of public funds, and the high school textbooks adopted by the State Board of Education in accordance with the provisions of this article shall be used by all the public high schools of the State. (1931, c. 359, s. 1.)

Cross Reference.—For subsequent statute affecting this article, see § 115-278.1 et seq.

§ 115-273: Repealed by Session Laws 1945, c. 707, s. 12.

§ 115-274. **Grouping of high school instruction; examination of books; submission of multiple list and annual reports.**—It shall be the duty of the State committee on high school textbooks to list all the high school fields of instruction in five separate groups as nearly equal as possible in the cost of textbooks. The committee on high school textbooks shall further arrange these groups in the order in which they will be considered, and notify the State Board of Education in its first report of this arrangement. During the first year of its term of office, it shall be the further duty of the State committee on high school textbooks to make a thorough examination of any and all books submitted by any publisher in the first group of fields of instruction as arranged by said State committee on high school textbooks, with a view of determining whether the contents, quality and price of said books are such as to make them suitable and desirable for use in the public high schools of the State, and submit, not later than the first day of January, one thousand nine hundred and thirty-four, a multiple list not exceeding three books in each field of instruction in the first group. Not later than January first in each succeeding year, the State committee on high school textbooks shall make a similar report on the fields of instruction in the order fixed by it, unless it receives a notice from the State Board of Education prior to May first in said year that such report is not desired. (1931, c. 359, s. 3.)

§ 115-275. **Selection of one book per subject by State Board of Education; indefinite contract with publishers; annual report by publishers.**—It shall be the duty of the State Board of Education to select one book in each field of instruction from the multiple list submitted by the State committee on high school textbooks for exclusive use in the public high schools of the State for a period not less than five years. In case the State Board of Education finds it impossible to make a satisfactory contract for any one of the books on the multiple list, then it shall notify the State committee on high school textbooks that it cannot make a satisfactory contract for any book on the multiple list in that field of instruction. The State committee on high school textbooks shall then submit another multiple list in that field of instruction from which the State Board of Education shall make an adoption. It shall be the further duty of the State Board of Education to make an indefinite contract with all the publishers having books in groups two, three, four and five for a period not less than one year nor more than five years, and these books shall continue in use until the

State Board of Education, in accordance with the provisions of this article, shall adopt a book for State-wide use in any given field of instruction: Provided, that the contract shall require each publisher to report annually to the State Board of Education the total sales of each book in the State of North Carolina. (1931, c. 359, s. 4.)

§ 115-276. Attorney General to bring suit on publishers' contracts in event of failure to execute.—After a contract has been entered into between the State Board of Education and the publisher, if the publisher shall fail to keep its contract as to prices, distribution of books, an adequate supply of the edition of books as adopted, etc., the Attorney General shall bring suit against said company when requested by the State Board of Education, for such an amount as may be sufficient to enforce the contract or to compensate the State because of the loss sustained by failure to keep this contract. (1931, c. 359, s. 5.)

§ 115-277. Sale of books at lower price elsewhere reduces price to State.—If the publishers of any high school textbook on the adopted list in this State shall contract with another state, or with any county, city or town or other municipality, or shall place its books on sale anywhere in the United States, for or at a less price than that in its contract with the State of North Carolina, it shall be, and is hereby, made a part of the contract of that company to furnish that book to the high schools of this State at a price not to exceed that for which the book is furnished, sold, or placed on sale in any other state, or in any such other county, city, town or other municipality. (1931, c. 359, s. 6.)

§ 115-278. Adoption made exclusive.—The textbooks for high school instruction adopted under the provisions of this article shall be for the exclusive use of the high schools of this State when so adopted and placed upon the approved list in the manner as set out in this article. (1931, c. 359, s. 7.)

ARTICLE 38A.

Selection and Adoption of Textbooks.

§ 115-278.1. State Board of Education to select and adopt textbooks; basal textbooks.—The State Board of Education is hereby authorized to "select and adopt" for the exclusive use in the public schools of North Carolina, textbooks and publications, instructional materials, needed for instructional purposes, in each grade and on each subject matter, in which instruction is required by law. It shall adopt for a period of not less than five years, two basal primers, or readers for each of the first three grades, and one basal book or series of books on all other subjects required to be taught in the first eight grades, and two basal books for all subjects taught in the high school: Provided not more than three basal books may be adopted on the subject of North Carolina history. (1945, c. 707, s. 1.)

§ 115-278.2. Continuance and discontinuance of contracts with publishers; procedure for change of textbook.—At the expiration of existing or future contracts, the Board may, upon approval of the publisher, continue such contract in force from year to year for a period not exceeding five years. The Superintendent may at any time recommend to the Board that a given book is unsatisfactory for the schools whereupon the Board may call for a new selection and adoption.

In the event a change of any textbook is required by vote of the Board, the publisher shall be given ninety (90) days' notice prior to the first day of May, at the expiration of which time the Board is authorized to adopt a new book or books on said subject. The publisher desiring to terminate his contract which has been extended beyond the original contract period shall give notice to the Board

ninety (90) days prior to the first day of May. The Board may then proceed to a new adoption. (1945, c. 707, s. 2.)

§ 115-278.3. Board to adopt standard courses of study.—Upon recommendation of the Superintendent the Board shall adopt a standard course of study for each grade in the elementary school and in the high school. These courses of study shall set forth what subjects shall be taught in each grade, and outline the number of basal and supplementary books on each subject to be used in each grade. (1945, c. 707, s. 3.)

§ 115-278.4. Appointment of Textbook Commission; members and chairman; compensation.—The Governor and Superintendent may appoint a Textbook Commission of twelve members who shall hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Seven of the members shall be outstanding teachers or principals in the elementary grades; five shall be outstanding teachers or principals in the high school grades: Provided one of the members may be a county or city superintendent. The Commission shall elect a chairman, subject to the approval of the Governor and the State Superintendent. The members shall be paid a per diem and expenses as approved by the Board. (1945, c. 707, s. 4.)

§ 115-278.5. Commission to evaluate books offered for adoption.—The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the field in which the member teaches. Special consideration shall be given in the evaluation report as to the adaptability of the book to the grade for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

All evaluation reports shall be signed by the member making the report and filed alphabetically with the Board not later than a day certain as fixed by the Board when the call for adoption is made. (1945, c. 707, s. 5.)

§ 115-278.6. Selection of textbooks by Board.—At the next meeting of the Board following the filing of the reports the Textbook Commission shall meet with the Board and jointly they shall examine the reports. The Board shall then select from the evaluated list all books which satisfy the Board that such books will meet the teaching requirements of the North Carolina public schools in the grade or grades for which they are offered. The Board shall then request sealed bids from the publishers of all books so selected. (1945, c. 707, s. 6.)

§ 115-278.7. Adoption of textbooks and contracts with publishers.—The sealed bids of the publishers shall be opened at the next regular meeting of the Board in the presence of the Board. The Board may then adopt one of the books offered and enter into a contract with the publisher for such adopted book. The Board may refuse to adopt any of the books offered at the prices bid and call for new bids. (1945, c. 707, s. 7.)

§ 115-278.8. Charge for rentals.—The Board shall not charge a rental fee for books, supplies, and materials used in the public schools in excess of the actual cost to the State of the handling and administration of such rentals. (1945, c. 707, s. 8.)

§ 115-278.9. Board to regulate matters affecting validity of contracts; approval of Attorney General.—The Board shall make all needful rules and regulations with reference to asking for bids, notifying publishers as to calls

for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation clauses and such other material matters as may affect the validity of the contracts. All such contracts shall be subject to the approval of the Attorney General as to form and legality. (1945, c. 707, s. 9.)

§ 115-278.10. Purpose of article.—It is the purpose of this article to enable the Board to secure the best textbooks obtainable within the limits of available funds for use in the public schools of North Carolina; that all books offered shall be carefully considered; and that records shall be kept of all books offered and an evaluation report of such books filed in a permanent record. (1945, c. 707, s. 10.)

§ 115-278.11. Definitions.—As used in this article, the word "Board" shall mean the State Board of Education. "Superintendent" shall mean the State Superintendent of Public Instruction. (1945, c. 707, s. 11.)

ARTICLE 39.

Furnishing Textbooks.

§ 115-279. Free textbooks.—Any county board of education, the committee of any local tax district, or the board of trustees of any city administrative unit in the State is authorized to purchase books for the use of pupils in said county or district to be loaned to said pupils, without charge for the same, under such needful rules and regulations governing the loan of said textbooks as the said board may prescribe.

If instruction is given in the manual and domestic arts, the county board of education, the committee or board of trustees may, in its discretion, purchase and lend the necessary implements and materials to the pupils. And it shall also in a similar manner procure such apparatus, reference books, and other means of illustration as may be needed in the school.

1. The board of county commissioners, in addition to levying taxes for the current expense fund, the capital outlay fund, and the debt service fund, is hereby authorized to levy an additional tax to be known as the "tax for supplying free textbooks," which shall be sufficient to pay the cost of purchasing and loaning textbooks after an estimate has been submitted and approved by the commissioners. Any committee of a local tax district, or any board of trustees of a city administrative unit in a county not supplying free textbooks, is hereby authorized to use any part of the local tax funds, not otherwise appropriated in the district, to carry out the provisions of this section.

2. In the event that the county board of education, or the board of county commissioners, or both, shall fail to provide in the budget a sum sufficient to supply free textbooks in accordance with this section, or in the event that the sum derived from the local taxes in any local tax district is insufficient to provide free textbooks in such district or unit after other necessary expenses are met, the question of supplying free textbooks may be submitted to the qualified voters in the following manner:

Whenever the written petition of one-fourth of the qualified voters of a county, or of a local tax district or city administrative unit, setting forth the tax rate to be levied and calling for an election to be held upon the question of levying an additional special annual tax with which to purchase and supply free textbooks, is presented to the governing board, said board shall present the petition to the tax levying authority of said county, district or unit, which body shall order an election and conduct the same as near as may be under the rules governing the election for local taxes. If a majority of the qualified voters in said county, district or unit, shall cast their ballots "for free textbooks," the tax shall be levied and collected as all other county or local taxes for schools are levied and collected. It shall be the duty of the governing body of the school to

purchase books for the use of the pupils in said county, district or unit, and loan the same to pupils without charge in accordance with this section. (1923, c. 136, s. 340; C. S., s. 5750.)

§ 115-280. Rental of textbooks.—The county board of education or the board of trustees of any local tax district or city administrative unit is hereby authorized to rent such books to the children of any school district at a rental price not to exceed that set by the State Board of Education; and wherever books are rented that have not been contracted for by the State, the rental price shall not exceed that set by the State Board of Education. (1923, c. 136, s. 341; C. S., s. 5751; 1943, c. 721, s. 9.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Commission." The amendatory act provided that wherever reference is made in any statute relating to any such commissions as "State Commission," "State

Textbook Commission" and "State Textbook Purchase and Rental Commission," with reference to State textbooks, the reference shall be deemed to be to the State Board of Education.

§ 115-281. County and local boards to make rules; to use incidental expense fund.—The county board of education or the board of trustees of any local tax district or city administrative unit is hereby authorized to make all needful rules and regulations governing the rental of public school textbooks, and to apply any funds of the current expense fund remaining to the credit of the county or the city administrative unit to the purposes of this article: Provided, that before any amount is appropriated from this fund for these purposes, provisions shall be made for all needful expenses of said schools. (1923, c. 136, s. 342; C. S., s. 5752.)

§ 115-282. Books for indigent children.—County boards of education or the board of trustees of any local district or city administrative unit may set aside an amount not to exceed one hundred dollars (\$100.00) from the incidental expense fund to be used in purchasing public school textbooks, to be used in the manner designated, namely, that when it shall appear that the education of any child is limited because of the inability of said child to purchase necessary textbooks or to pay the rental price, said board or boards may loan free of cost all necessary books to any such child during the term of the school, subject to rules and regulations by the county board of education or the board of trustees of any local tax district or city administrative unit, and approved by the State Superintendent of Public Instruction. (1923, c. 136, s. 343; C. S., s. 5753.)

§ 115-283. State Superintendent to inform local school authorities.—The State Superintendent of Public Instruction is hereby requested to inform all superintendents of schools of the provisions of this article. (1923, c. 136, s. 344; C. S., s. 5754.)

§ 115-284. Local units authorized to establish capital fund for renting of textbooks.—The board of county commissioners in any county, upon the request of the county board of education therein, or of the board of trustees, of any city administrative unit therein, is hereby authorized and empowered to establish a capital fund in such county under the terms of and in accordance with the provisions of §§ 115-284 to 115-291, which fund shall be used by the county board of education, or by the board of trustees of any city administrative unit making such request for the operation of a system of textbook rentals to the patrons of the public schools of the county or city administrative unit, for which such capital fund may be established: Provided, however, that before any such request shall be presented to the board of county commissioners, the county board of education, or the board of trustees of any city administrative unit presenting the same shall obtain the approval of the State Board of Educa-

tion as hereinafter provided. It shall be the duty of the State Board of Education to prepare rules and regulations governing the establishment of rental depositories in accordance with the provisions of §§ 115-284 to 115-291. It shall be the duty of the State Superintendent of Public Instruction to acquaint the public school officials with the rules and regulations of the State Board of Education and to present to said Board for its approval or rejection all applications for such permission. (1931, c. 210, s. 1; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-285. Computation of amount of fund.—The necessary amount of such capital fund shall be determined by the board of county commissioners upon the basis of a comprehensive budget estimate prepared by the county board of education, or the board of trustees of any city administrative unit making such request, not exceeding, however, the extent and amount thereof approved by the State Board of Education. (1931, c. 210, s. 2; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-286. Budget estimate to be made up; repayments to fund out of rental fees.—Before the board of commissioners of any county shall establish such capital fund it shall be the duty of the county board of education, or the board of trustees of any city administrative unit making request therefor to prepare a budget estimate covering a definite and specified period showing the estimated income from rentals for each year, the estimated cost of textbooks and supplies for each year and a balanced budget at the end of a specified and definite period. Such budget shall be prepared in accordance with rules and regulations to be adopted and promulgated by the State Board of Education. It shall be the duty of the county board of education, or the board of trustees of any city administrative unit requesting and securing the establishment of any such capital fund for its benefit to make provision for the payment out of rental fees of the principal fund of the capital fund and the interest arising thereon in the manner and within the term provided for in the certificate of approval granted by the State Board of Education, and it shall be the duty of the State Board of Education in granting the approval to any such request to specify in its order granting said approval the time within which said repayments shall be made and the amount of such repayment to be made during each year of such time. (1931, c. 210, s. 3; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-287. Details of administration of fund; record of receipts and disbursements; annual audit.—Any capital fund established under the provisions of §§ 115-284 to 115-291 shall be placed to the credit of the county board of education, or the board of trustees of any city administrative unit making request therefor, which board shall administer the fund under such rules and regulations as the said board may prescribe, with the approval of the State Board of Education, not in conflict, however, with the provisions of §§ 115-284 to 115-291. It shall be the duty of the county board of education, or the board of trustees of any city administrative unit for whose benefit such capital fund is established, to keep accurate record of receipts and disbursements made from this fund and to cause such records and the accounts thereof to be audited in July of each and every year and a copy of said audit shall be kept as a part of the permanent records of the office of said State Board of Education and

one copy thereof shall be filed with the board of county commissioners of the county, one copy with the State Superintendent of Public Instruction and one copy with the State Board of Education. It shall be unlawful for the county board of education, or the board of trustees of any city administrative unit to use any part of the funds so provided for any purpose, even temporarily, other than the purposes for which said fund is established and in accordance with the provisions of §§ 115-284 to 115-291. (1931, c. 210, s. 4; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-288. Purchase of books, etc., with fund; schedules of rentals; patrons may purchase at cost.—The county board of education, or board of trustees of any city administrative unit for whose use and benefit such capital fund has been established is hereby authorized to purchase textbooks and instructional supplies and pay for same out of the said capital fund, together with such rental fees as said board may determine upon and to rent such textbooks and instructional supplies and to rent or furnish said textbooks and instructional supplies to the patrons of the public schools of such county, or such city administrative unit: Provided, that the rental fees charged therefor shall be in accordance with schedules submitted to and approved by the State Board of Education: Provided, further, that any patron of the public schools may purchase textbooks at net cost from any rental depository. (1931, c. 210, s. 5; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-289. Handling of fund by fiscal agent; warrants on fund.—Such capital fund so established shall be deposited with the fiscal agent of the county to the credit of the county board of education, or board of trustees of any city administrative unit for which said fund is established and shall be paid out upon a warrant signed by the chairman and secretary of such board and approved by such officer as the County Fiscal Control Act may require: Provided, that such officer required to approve the same by the County Fiscal Control Act shall receive no additional compensation for such services. (1931, c. 210, s. 6.)

§ 115-290. Units and counties excepted.—Sections 115-284 to 115-291 shall not apply to any county, or territory formerly known as a special charter district which has heretofore established a fund for the purchase and rental of textbooks to patrons of the public schools of such county, or territory formerly known as a special charter district: Provided, however, that the county board of education, or the board of trustees of any city administrative unit may, with the approval of the majority of any such board, bring themselves under the provisions of §§ 115-284 to 115-291. (1931, c. 210, s. 7.)

Local Modification. — Caswell, Richmond: 1931, c. 210, s. 7.

§ 115-291. Fumigation and disinfection of books.—The State Superintendent of Public Instruction, in conjunction with the State Board of Health, shall adopt rules and regulations governing the use and fumigation and/or disposal of textbooks from quarantined homes and for the regular disinfection of all textbooks used in the public schools of the State: Provided, that said rules shall be attached to any rules and regulations that the State Board of Education may promulgate. (1931, c. 210, s. 8; 1933, c. 562, s. 2; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

ARTICLE 40.

State Board of Education.

§ 115-292. Repealed by Session Laws 1943, c. 721, s. 9.

§ 115-293. **Powers and duties of Board.**—The State Board of Education is hereby authorized and directed to administer funds and to establish rules and regulations necessary to:

(1) Acquire by contract and/or purchase such textbooks and instructional supplies which are or may be on the adopted list of the State of North Carolina, and to purchase by contract as now provided by law material, supplies, and equipment which the Board may find necessary to meet the needs of the public school system of the State and to carry out the provisions of this article.

(2) Provide a system of distribution of said textbooks and supplies to the children in the public schools of the State, and distribute such books as are provided under the rental system without the use of any depository other than some agency of the State; to use warehouse facilities for the distribution of all the supplies, materials, and equipment authorized to be purchased in subsection (1) hereof.

(3) Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades of the elementary public schools of North Carolina as may be determined by the State Board of Education. Title to said books shall be vested in the State. For the purposes of this article, the elementary grades shall be considered the grades from one to eight, inclusive. The basal elementary textbooks in the hands of the State Board of Education, when this measure is put in effect, shall become a part of the stock of books needed to carry out the provisions of this article: Provided, the State Board of Education may furnish basal elementary textbooks on a rental basis in any or all elementary grades if it is deemed necessary.

(4) Provide books for high school children in the public high schools of North Carolina on a rental basis. Said rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks: Provided, that free basal books may be furnished to high school children if sufficient funds are available and if the Board finds it advisable to take such action.

(5) Provide supplementary readers for the elementary children in the public elementary schools of North Carolina on a rental basis. Said rental charge shall be collected in an amount not to exceed one-third of the cost of said textbooks.

(6) Provide and distribute all blanks, forms, and reports necessary to keep a careful record of all the books, including their use, state of repair and such other information as the Board may require.

(7) Buy, sell, or rent library books to be placed in the public schools of this State from a list to be selected by the State Superintendent of Public Instruction, with the approval of the State Board of Education, and to be placed in such schools as may be designated by the State Board of Education: Provided, that such library books shall be purchased in accordance with rules and regulations duly promulgated by the State Board of Education.

(8) Provide for the use of said textbooks without charge to the indigent children of the State.

(9) Cause an annual audit to be made of the affairs of the said Board and a certified copy of same to be furnished the Governor and Council of State.

Nothing in this section shall be construed to prevent the purchase of textbooks needed for any child in the public schools of the State from said Board by any parent, guardian, or person in loco parentis.

Whenever any county or city administrative unit has paid over to the State Board of Education, in rentals, a sum equal to the price fixed by said Board for the sale of rental textbooks, said county or city administrative unit may, at its

option, with the approval of the Board, withdraw from the textbook rental system set up under rules and regulations adopted by the Board, and upon such withdrawal, shall become the absolute owner of all such textbooks for which the purchase price has been paid in full to the said Board. (1935, c. 422, s. 2; 1937, c. 169, s. 2; 1939, c. 90; 1941, c. 301; 1943, c. 721, s. 9; 1945, c. 581, ss. 1, 2; 1945, c. 655.)

Cross Reference.—For subsequent statute affecting this section, see § 115-278.1 et seq.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Textbook Commission" and "State

Textbook Purchase and Rental Commission."

The first 1945 amendment made changes in paragraphs (1) and (2), and the second 1945 amendment substituted "eight" for "seven" in line eight of paragraph (3).

§ 115-294. Books not interchangeable between white and colored schools. — Books shall not be interchangeable between the white and colored schools, but shall continue to be used by the race first using them. (1935, c. 422, s. 2.)

§ 115-295. Purchases through Division of Purchase and Contract.—The purchase of all textbooks and supplies under the provisions of this article adopted as now provided by law shall be made through the Division of Purchase and Contract. (1935, c. 422, s. 3.)

§ 115-296. Rentals paid to State treasury; disinfecting books.—All sums of money collected as rentals under the provisions of this article shall be paid monthly as collected into the State treasury, to be entered as a separate item known as the "State textbook rental fund." Disbursement of said funds shall only be had by order of the Council of State: Provided, that the State Board of Education in conjunction with the State Board of Health shall adopt rules and regulations governing the use and fumigation for the regular disinfection of all textbooks used in the public schools of the State.

The Governor, with the approval of the Council of State, may, upon request and certification of the State Board of Education that surplus funds in the State textbook rental fund herein provided for are needed for the purchase of rental textbooks, transfer so much of said surplus to the general fund of the State to be used for the purchase of free textbooks and operating expenses as, in their judgment, may be necessary for the operation of the free textbook system now provided by law: Provided, any funds used for the free textbook system shall be the funds advanced to the State Board of Education for the operation of the rental system as outlined in chapter four hundred and twenty-two, Public Laws of one thousand nine hundred and thirty-five, but payments made from the rental fund for the free textbook system shall not be in excess of the amount advanced under chapter four hundred and twenty-two.

All other revenues of the textbook rental system shall be used exclusively for providing textbooks, library books, and other instructional materials to the pupils that pay the rental fees, and to pay such expenses as are necessary in the operation of the rental system. (1935, c. 422, s. 4; 1937, c. 169, s. 1; 1943, c. 391; 1943, c. 721, s. 9; 1945, c. 970, s. 13.)

Editor's Note. — The first 1943 amendment added the second paragraph, and the second 1943 amendment substituted "State Board of Education" for "State Textbook

Commission" in the first paragraph.

The 1945 amendment rewrote the second paragraph and added the third paragraph.

§ 115-297. Local rental systems unaffected; rental fees limited; purchases from State Board of Education allowed.—Any county or city board of education now operating a textbook rental system shall be permitted to continue such local rental system without interference from the State Board of Education: Provided, that the rental fees charged by such local rental authority shall not ex-

ceed the rental charges set by the State Board of Education: Provided, further, that such local textbook rental authority may purchase from the State Board of Education textbooks for its local use. (1935, c. 422, s. 5; 1943, c. 721, s. 9.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State Commission."

§ 115-298. Legal custodians of books furnished by State.—The county board of education in each county administrative unit and the school governing board in each city administrative unit shall be designated the legal custodians of all books furnished by the State, either for free use or on a rental basis. It shall be the duty of the said boards to provide adequate and safe storage facilities for the proper care of said books. (1937, c. 169, s. 3.)

§ 115-299. Duties and authority of superintendents of local administrative units; withholding salary for failure to comply with section.—It shall be the duty of the superintendent of each administrative unit as ex officio agent of the commission to administer the provisions of this article and the rules and regulations of the State Board of Education, insofar as said article and said rules and regulations may apply to said unit. He shall also have authority to require the co-operation of principals and teachers to the end that the children may receive the highest possible service, and that all books and moneys may be properly accounted for. In the event any teacher or principal shall fail to comply with the provisions of this section, it shall be the duty of the superintendent to withhold the salary checks of said principal or teacher until the duties imposed hereby have been performed.

In the event any superintendent shall fail to comply with the provisions of this section it shall be the duty of the State Board of Education and the State Superintendent of Public Instruction to withhold salary checks of said superintendent and the State Treasurer shall not pay same until the duties imposed hereby have been performed, and it shall be the duty of the secretary of the State Board of Education to notify the State Board of Education, the State Superintendent of Public Instruction, and the State Treasurer in the event any superintendent shall fail to comply with the provisions of this section, and no payments shall be made until notice has been received from the secretary of the State Board of Education that the provisions of this section have been complied with. (1937, c. 169, s. 4; 1941, c. 190; 1943, c. 721, ss. 8, 9.)

Editor's Note. — The 1941 amendment added the second paragraph. The 1943 amendment substituted "State Board of Education" for "State Textbook Commission" and "State School Commission."

ARTICLE 41.

Public Libraries.

§ 115-300. Rules and regulations governing their establishment.—The State Board of Education is hereby authorized to adopt such rules and regulations governing the establishment of public libraries receiving State aid as will best serve the educational interest of the people. It shall have authority to use all of the State appropriation for rural libraries, to encourage the establishment of county circulating libraries, or to co-operate with the State Library Commission in providing circulating libraries for schools. (1923, c. 136, s. 345; C. S., s. 5755.)

§ 115-301. Aid in establishing local libraries.—The State Board of Education may use such portion of the state appropriation to rural libraries as it may deem necessary to aid the public schools in establishing local libraries as provided herein.

When the patrons and friends of any union school in which a standard high school is or is to be maintained shall raise by private subscription and tender to

the treasurer of the county school fund for the establishment of a library to be connected with the school the sum of fifty dollars, the county board of education shall appropriate from the current expense fund the sum of fifty dollars for this purpose.

As soon as the county board shall have made an appropriation for a library in the manner prescribed, the county superintendent shall inform the secretary of the State Board of Education of the fact, whereupon the State Board, if the funds on hand are sufficient, shall remit to the treasurer of the county school fund the sum of fifty dollars additional for the purchase of books. (1923, c. 136, s. 346; C. S., s. 5756.)

SUBCHAPTER XV. COMPULSORY ATTENDANCE IN SCHOOLS.

ARTICLE 42.

General Compulsory Attendance Law.

§ 115-302. Parent or guardian required to keep child in school; exceptions.—Every parent, guardian or other person in the State having charge or control of a child between the ages of seven and fifteen years during the twelve months following July first, one thousand nine hundred and forty-five, and between the ages of seven and sixteen years thereafter, shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse the child temporarily from attendance on account of sickness or distance of residence from the school, or other unavoidable cause which does not constitute truancy as defined by the State Board of Education. The term "school" as used in this section is defined to embrace all public schools and such private schools as have tutors or teachers and curricula that are approved by the county superintendent of public instruction or the State Board of Education.

All private schools receiving and instructing children of compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school or tutor refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district, town or city which the child shall be entitled to attend: Provided, instruction in a private school or by private tutor shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1923, c. 136, s. 347; C. S., s. 5757; 1925, c. 226, s. 1; 1945, c. 826; 1949, c. 1033, s. 1.)

Editor's Note.—The 1925 amendment made this section applicable to certain private schools by adding the last sentence of the first paragraph and all of the second paragraph. The 1945 amendment rewrote the first sentence of the first paragraph, and the 1949 amendment inserted in the second paragraph the words "and maintain such minimum curriculum standards."

For brief comment on the 1925 amendment, see 3 N. C. Law Rev. 149.

As to statute emphasizing validity of expenditure for school purposes, see *Lacy v. Fidelity Bank*, 183 N. C. 373, 11 S. E. 612 (1922).

Sufficiency of Indictment.—For a conviction under the provision of this section it is necessary for the indictment to allege,

and the State offer evidence tending to show, not only that the parent or guardian of the children within the described age had failed or refused to send them to the public school within the district, but also that such child or children had not been sent to attend school periodically for a period equal to the time which the public school in the district in which they reside shall be in session. *State v. Johnson*, 188 N. C. 591, 125 S. E. 183 (1924).

Failure to Charge as to Other than District School.—Where the indictment does not sufficiently allege the failure of the parent or guardian to send the child to another than the public school in the district, as required by this section, an amendment may be allowed to cure the defect. *State*

v. Johnson, 188 N. C. 591, 125 S. E. 183 (1924).

Same—Private Schools.—An indictment charging a parent with unlawfully and willfully failing to cause his children, between the ages of 8 and 14 years, to attend the public schools of the district of his and the children's residence, as required by the statute, is defective in not observing the distinction that the parent, having the custody of his children, may have them attend private schools for the required period, and no conviction may be had under the charge set out in the indictment. *State v. Lewis*, 194 N. C. 620, 140 S. E. 434 (1927).

Same—Burden Not on Parent.—Where

the indictment is defective in failing to charge that a parent or guardian had also failed to send the child or children to another than the district school, etc., under the provisions of this section and the State offers no evidence in respect to it, it is not required that the parent or guardian offer evidence to show that he had complied with the proviso of the statute; and an instruction of the court to the jury placing the burden upon the defendant to so show, is reversible error. *State v. Johnson*, 188 N. C. 591, 125 S. E. 183 (1924).

Applied in *Hayes v. Benton*, 193 N. C. 379, 137 S. E. 169 (1927).

§ 115-303. State Board of Education to make rules and regulations; method of enforcement.—It shall be the duty of the State Board of Education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The Board shall prescribe what shall constitute truancy, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that § 115-302 shall not be in force in any city or county that has a higher compulsory attendance law now in force than that provided herein; but in any such case it shall be the duty of the State Board of Education to investigate the same and decide that any such law now in force has a higher compulsory attendance feature than that provided by this article.

Mental incapacity shall be an excuse for nonattendance, and is interpreted to mean feeble-mindedness or such nervous disorder as to make it either impossible for such child to profit by instruction given in the school or impracticable for the teacher properly to instruct the normal pupils of the school. In the case of feeble-minded children the teacher shall designate the same in her reports to the county superintendent of public welfare, and it shall be his duty to report all such cases to the State Board of Charities and Public Welfare. Whereupon said Board shall make, or cause to be made, an examination to ascertain the mental incapacity of said child and report the same to the county or city superintendent involved. Upon receipt of said report the local school authorities are hereby authorized, under such limitations and rules as the State Board of Education may adopt, to exclude said child from the public school when it is ascertained that the child cannot benefit by said instruction and his presence becomes a source of disturbance to the rest of the children. In all such cases in which a child is excluded from school a complete record of the whole transaction shall be filed in the office of the county or city superintendent and kept as a public record. (1923, c. 136, s. 348; C. S., s. 5758; 1931, c. 453.)

Editor's Note. — The 1931 amendment added the second paragraph.

§ 115-304. Attendance officers; reports; prosecutions.—The State Superintendent of Public Instruction shall prepare such rules and procedure and furnish such blanks for teachers and other school officials as may be necessary for reporting each case of truancy or lack of attendance to the chief attendance officer referred to in this article. Such rules shall provide, among other things, for a notification in writing to the person responsible for the nonattendance of any

child, that the case is to be reported to the chief attendance officer of the county unless the law is immediately complied with. The county board of education in a county administrative unit and the board of trustees in a city administrative unit may employ special attendance officers to be paid from funds derived from fines, forfeitures and penalties, or other local funds, and said officers shall have full authority to prosecute for violations of this article: Provided that in any unit where a special attendance officer is employed, the duties of chief attendance officer or truant officer as provided by law shall, insofar as they relate to such unit, be transferred from the county superintendent of public welfare to the special attendance officer of said unit. (1923, c. 136, s. 349; C. S., s. 5759; 1939, c. 270.)

Local Modification.—Polk: 1947, c. 348.

Editor's Note. — The 1939 amendment changed the latter half of this section.

§ 115-305. **Violation of law; penalty.**—Any parent, guardian, or other person violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be liable to a fine not less than five dollars nor more than twenty-five dollars, and upon failure or refusal to pay such fine, the said parent, guardian or other person shall be imprisoned not exceeding thirty days in the county jail. (1923, c. 136, s. 350; C. S., s. 5760.)

§ 115-306. **Investigation and prosecution by county superintendent or attendance officer.**—The county superintendent of public welfare or chief school attendance officer or truant officer provided for by law shall investigate and prosecute all violators of the provisions of this article. The reports of unlawful absence required to be made by teachers and principals to the chief attendance officer shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1923, c. 136, s. 351; C. S., s. 5761; 1925, c. 226, s. 2.)

Editor's Note. — The 1925 amendment added the second sentence.

§ 115-307. **Investigation as to indigency of child.**—If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and fourteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance officer shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making a bona fide effort to comply with the Compulsory Attendance Act, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the county board of education of the county or, in the city administrative units, to the board of trustees in which the case may arise. (1923, c. 136, s. 352; C. S., s. 5762.)

§ 115-308. **Aid to indigent child.**—The county board of education shall in its discretion order aid to be given the family from the current expense fund of the county school budget to an extent not to exceed ten dollars per month for such child during the continuance of the compulsory term; and shall at the same time require said officer to see that the money is used for the purpose for which it is appropriated and to report from time to time whether it shall be continued or withdrawn. And the county board of education is hereby authorized in making out

the county budget to provide a sum to meet the provisions of this article. (1923, c. 136, s. 353; C. S., s. 5763.)

ARTICLE 43.

Compulsory Attendance of Deaf and Blind Children.

§ 115-309. Deaf and blind children to attend school; age limits; minimum attendance.—Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of six and eighteen years. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf as is herein provided: Provided, that the board of directors of any school for the deaf or blind may exempt any such child from attendance at any session or during any year, and may discharge from their custody any such blind or deaf child whenever such discharge seems necessary or proper. Whenever a deaf or blind child shall reach the age of eighteen and is still unable to become self-supporting because of its defects, such a child shall continue in said school until it reaches the age of twenty-one, unless it becomes self-supporting sooner. (1923, c. 136, s. 354; C. S., s. 5764; 1945, c. 497, s. 1.)

Editor's Note. — The 1945 amendment and eighteen" in referring to the ages of substituted "six and eighteen" for "seven children subject to the statute.

§ 115-310. Parents, etc., failing to send deaf child to school guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any deaf children between the ages of six and eighteen years failing to send such deaf child or children to some school for instruction, as provided in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided: Provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the approval of the executive committee of such institution, shall in his and their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge. (1923, c. 136, s. 355; C. S., s. 5765; 1945, c. 497, s. 2; 1947, c. 388, s. 1.)

Editor's Note. — The 1945 amendment may remain out of school." struck out the former provision "that parents, guardians, or custodians may elect two years between the ages of seven and eighteen years that a deaf child or children The 1947 amendment substituted "six" for "seven" near the beginning of the section.

§ 115-311. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any blind child or children between the ages of six and eighteen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided, (1) that this section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on such parents, guardians, or custodians directing that such child be sent to the school whereof they have charge; and (2) that the authorities of the State School for the Blind and the Deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1923, c. 136, s. 356; C. S., s. 5766; 1947, c. 388, s. 2.)

Editor's Note. — The 1947 amendment substituted "six" for "seven" near the beginning of the section.

§ 115-312. **County superintendent to report defective children.**—It shall be the duty of the county superintendent to report through proper legal channels, the names and addresses of parents, guardians, or custodians of deaf, dumb, blind, and feeble-minded children to the principal of the institution provided for each, and upon the failure of the county superintendent to make such reports, he shall be fined five dollars for each child of the class mentioned above not so reported. (1923, c. 136, s. 357; C. S., s. 5767.)

SUBCHAPTER XVI. RURAL RECREATION.

ARTICLE 44.

School Extension Work.

§ 115-313. **Moving pictures for rural communities; cost.**—It shall be the duty of the State Superintendent of Public Instruction to provide for a series of rural entertainments, varying in number and cost and consisting of moving pictures selected for their entertaining and educational value, which entertainments may be given in the rural schoolhouses of the State as herein provided. The cost of such entertainment shall be borne one-third by the State and two-thirds by the county board of education or the rural school community desiring said entertainment. (1917, c. 186, ss. 1, 2; C. S., s. 5776.)

§ 115-314. **State Superintendent to supply information and provide for entertainments; community deposit.**—It shall be the duty of the State Superintendent of Public Instruction to inform the various county boards of education of the number, character, and cost of the entertainments provided by him under the provisions of this article; and upon application of any county board of education, agreeing to pay two-thirds of the cost of any such entertainments, it shall be the duty of the State Superintendent of Public Instruction to provide for the giving of such entertainments in the rural schoolhouse or houses designated in the application. Any rural school community shall be entitled to the benefits of this article by depositing with its county board of education two-thirds of the cost of entertainments desired, and in all cases it shall be the duty of the county board of education receiving such deposits to make immediate application to the State Superintendent of Public Instruction as herein provided. (1917, c. 186, s. 3; C. S., s. 5777.)

§ 115-315. **Health and agricultural authorities to co-operate.**—The State Board of Health and the Commissioner of Agriculture are hereby authorized and directed to co-operate with the State Superintendent of Public Instruction in arranging for the entertainments provided for by this article, to the end that the entertainment may, if it is deemed advisable, include the subjects of public health and agriculture. (1917, c. 186, s. 4; C. S., s. 5778.)

SUBCHAPTER XVII. HEALTH.

ARTICLE 45.

Physical Examination of Pupils.

§ 115-316. **State Board of Health and State Superintendent to make rules for physical examination.**—It shall be the duty of the State Board of Health and the State Superintendent of Public Instruction to prepare and distribute to the teachers in all public schools of the State instructions and rules and regulations for the physical examination of pupils attending the public schools. (1919, c. 192, s. 1; C. S., s. 5779.)

§ 115-317. **Teachers to make examinations; State covered every three years.**—Upon receipt of such instructions, rules and regulations, it shall

be the duty of every teacher in the public schools to make a physical examination of every child attending the school and enter on cards and official forms furnished by the State Board of Health a record of such examination. The examination shall be made at the time directed by the State Board of Health and the State Superintendent of Public Instruction, but every child shall be examined at least once every three years. The State Board of Health and the State Superintendent of Public Instruction shall so arrange the work as to cover the entire State once every three years. (1919, c. 192, s. 2; C. S., s. 5780.)

§ 115-318. Record cards transmitted to State Board of Health; punishment for failure.—The teacher shall transmit the record cards and other blank forms made by him or her to the North Carolina State Board of Health, and if any teacher fails within sixty days, after receiving the aforesaid forms and requests for examination and report, to make such examination and report as herein provided, the teacher shall be guilty of a misdemeanor and subject to a fine of not less than ten dollars nor more than fifty dollars or thirty days in prison. (1919, c. 192, s. 3; C. S., s. 5780(a).)

§ 115-319. Disposition of records; re-examination of pupils.—The North Carolina State Board of Health shall have the records filed by the teacher carefully studied and classified, and shall notify the parent or guardian of every child whose card shows a serious physical defect to bring such child before an agent of the State Board of Health on some day designated by the State Board of Health between the hours of nine a. m. and five p. m. for the purpose of having said child thoroughly examined; and if, upon receipt of such notice, any parent or guardian shall fail or refuse to bring said child before the agent of the State Board of Health without good cause shown, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than fifty dollars or imprisoned not more than thirty days: Provided, that the distance the child must be carried shall not exceed ten miles.

No pupil or minor shall be compelled to submit to medical examination or treatment whose parent or guardian objects to the same. Such objection may be made by a written and signed statement delivered to the pupil's teacher or to any person who might conduct such examination or treatment in the absence of such objection. (1919, c. 192, s. 4; C. S., s. 5780(b).)

§ 115-320. Treatment of pupils; expenses.—Within thirty days after the completion of the examination of the children by the agent of the State Board of Health and after written statement of the proper authority hereinafter designated, a sum not exceeding ten dollars per hundred children enrolled in the county or city shall be paid to the State Board of Health to be used exclusively for the purpose of treating school children for defects other than dental, the same to be paid by the county commissioners of the county, and in cities or towns having a separate school system, to be paid by the city manager, city council, city board of aldermen, or city commissioners. Any funds so paid and not needed in enforcing the provisions of this article shall be returned to the county or city from which it was received. (1919, c. 192, s. 5; C. S., s. 5780(c).)

§ 115-321. Free dental treatment.—The State Board of Health shall provide free dental treatment for as many school children as possible each year. (1919, c. 102, s. 14; 1919, c. 192, s. 6; C. S., s. 5780(d).)

SUBCHAPTER XVIII. STATE BOARD OF EDUCATION TO LICENSE CERTAIN INSTITUTIONS.

ARTICLE 46.

State Board of Education to Regulate Degrees.

§ 115-322. **Right to confer degrees restricted.**—No educational institution hereafter created or established by any person, firm, or corporation in this State shall have power or authority to confer degrees upon any person except as herein provided. (1923, c. 136, s. 358; C. S., s. 5780(e).)

§ 115-323. **Powers to grant license to confer degrees.**—The State Board of Education is authorized to issue its license to confer degrees in such form as it may prescribe to any educational institution hereafter established by any person, firm, or corporation in this State; but no educational institution hereafter established in the State shall be empowered to confer degrees unless it has income sufficient to maintain adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, and unless its baccalaureate degree is conferred only upon students who have completed a four-year college course, preceded by the usual four-year high school course, or their equivalent. (1923, c. 136, s. 359; C. S., s. 5780(f).)

§ 115-324. **Inspection of institutions; revocation of license.**—All institutions licensed under this article shall file such information with the State Superintendent of Public Instruction as the State Board of Education may direct, and it shall have full authority to send an expert to visit any institution applying for a license to confer degrees under this article. And if any one of them shall fail to keep up the required standard the State Board of Education shall revoke the license to confer degrees, subject to a right of review of this decision by a judge of the superior court upon action instituted by the educational institution whose license had been revoked. (1923, c. 136, s. 360; C. S., s. 5780(g).)

SUBCHAPTER XIX. COMMERCIAL EDUCATION.

ARTICLE 47.

Licensing of Commercial Schools.

§ 115-325. **Commercial college or business school defined.**—A commercial college or business school shall be defined as follows: Any person, partnership, association of persons, or any corporation, or operators of correspondence schools, within the State of North Carolina, which teaches, publicly, for compensation, any or all the branches of accounting, bookkeeping, stenotype, stenography, typing, telegraphy, and other commercial subjects which are usually taught in commercial colleges or business schools: Provided, however, that any person or individual who undertakes to give instruction in the above subjects to five or less students shall not be construed as the operator of a commercial college or business school. (1935, c. 255, s. 1; 1937, c. 184.)

Editor's Note. — The 1937 amendment inserted the words "person" and "or operators of correspondence schools within the State of North Carolina," and added the proviso.

§ 115-326. **Securing permit before operating.**—Any person, partnership, association of persons, or any corporation, or operators of correspondence schools, within the State of North Carolina, desiring to open a commercial college or to establish a branch college or school in this State for the purpose of teaching bookkeeping, stenography, stenotype, typing, telegraphy, and other courses which are usually taught in commercial colleges, before commencing business, must secure a permit from the State Board of Education of the State of North Carolina

authorizing such person, partnership, association of persons or corporation to open and conduct such commercial college or branch college or school. (1935, c. 255, s. 2; 1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note. — The 1937 amendment made this section applicable to operators of correspondence schools. The 1943 amendment substituted "State Board of Education" for "State Board of Commercial Education."

§ 115-327: Repealed by Session Laws 1943, c. 721, s. 6.

§ 115-328. **Application for permit; investigation; fees.**—Application for such permit to open and conduct a business or correspondence school shall state specifically the name of such person, partnership or corporation, and said application shall be filed with the State Board of Education at Raleigh. If, after due investigation on the part of said Board, it is shown to the satisfaction of said Board that said applicant is professionally qualified to conduct said school and possesses good moral character for fair and honest dealings, then said Board shall approve said application and issue permit to said applicant. Before such permit shall be issued, the applicant shall pay to the State Board of Education a fee of ten dollars (\$10) as a minimum, and twenty-five dollars (\$25) as a maximum, the amount needed being left to the discretion of the Board of Education, which fee shall be paid annually on the first day of July to the said Board so long as said school shall continue to operate. Said fees shall be used for office and traveling expenses by said Board or its authorized representatives for investigating applications for conducting commercial schools and also complaints against such schools, and the secretary of the Board shall keep an account of all moneys received and disbursed which account shall be open at all times to inspection by all persons operating commercial schools and licensed by said Board. (1935, c. 255, s. 3; 1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note. — The 1937 amendment changed the first two sentences, and the 1943 amendment substituted "State Board of Education" for "State Board of Commercial Education."

§ 115-329. **Execution of bond required; filing and recording.**—Before the State Board of Education shall issue such permit, the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars (\$1,000), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent sureties, payable to the clerk of the superior court of the county in which such college, branch college, or school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and all contracts, made and entered into by said college or branch college or school, acting by and through its officers and agents, with any student who desires to enter such college and to take any course in commercial training, and will pay back to such student all amounts collected for tuition and fees in case of failure on the part of the parties obtaining a permit from the State Board of Education to open and conduct a commercial college, or branch college or school, to comply with its contracts to give the instructions contracted for, and for the full period evidenced by such contract. Such bond shall be filed with the clerk of superior court of the county in which the college or branch or school executing the bond is located, and recorded by such clerk in a book provided for that purpose.

The requirement herein specified for giving the aforesaid bond of one thousand dollars (\$1,000.00) shall apply to all commercial colleges, business schools and correspondence schools and branches thereof operating in North Carolina, and the said State Board of Education shall not issue any permit or license to any person, firm, or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of superior court has been filed with said Board of Education. Operators' bonds of one thousand dollars (\$1,000.00) each shall be required for each branch of

such commercial colleges, business schools, or correspondence schools operated within the State by any person, partnership, or corporation. (1935, c. 255, s. 4; 1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note. — Prior to the 1937 amendment, which added the second paragraph, the bond of a guaranty company was required. The 1943 amendment substituted "State Board of Education" for "Board of Commercial Education."

§ 115-330. Right of action upon bond in event of breach; revocation of permit; Board generally to supervise schools.—In any and all cases where the party receiving the permit from the State Board of Education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then said student, parent or guardian entering into the contract shall have a cause of action against the sureties on the bond as herein provided for the full amount of the payments made to such person, with six (6) per cent interest from the date of payment of said amount. For a proven violation of its contracts with its students, the State Board of Education is authorized to revoke the license issued to the offending school. Through periodic reports required of licensed commercial schools and by inspections made by members of the State Board of Education or its authorized representatives, the Board of Education shall have general supervision over commercial schools, of the State, the object of said supervision being to protect the public welfare by having the licensed commercial schools to maintain proper school quarters, equipment and teaching forces and of having the school carry out its advertised promises and its contracts made with its students and patrons. (1935, c. 255, s. 5; 1943, c. 721, s. 6.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "Board of Commercial Education." **Cited in** Moore v. Board of Education, 212 N. C. 499, 193 S. E. 732 (1937).

§ 115-331. Operating school without permit made misdemeanor.—Any person, or each member of any partnership, or each member of any association of persons, or each officer of any corporation who opens and conducts a commercial college or branch college or school without first having obtained the permit required in § 115-326, and without first having executed the bond required in § 115-329, shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and each day said college continues to be open and operated shall constitute a separate offense. (1935, c. 255, s. 6.)

§ 115-332. Institutions exempted.—The provision of this article shall not apply to any established university, professional, or liberal arts college, regular high school or any State institution which has heretofore adopted or which may hereafter adopt one or more commercial courses, provided the tuition fees and charges, if any, made by such university, college, high school or State institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, or high school; but the provisions of this article shall apply to all commercial colleges, business schools and correspondence schools operated within the State of North Carolina as commercial institutions. (1935, c. 255, s. 7; 1937, c. 184.)

Editor's Note. — Prior to the 1937 amendment established commercial colleges having one or more commercial courses were also exempted.

§ 115-333. Application of article to nonresidents, etc.—All persons, partnerships, associations of persons, which are nonresidents of North Carolina, or corporations organized and chartered under the laws of any other state, must comply with the provisions of this article before such can open and conduct a

commercial college or branch college, or school in the State of North Carolina. (1935, c. 255, s. 8.)

§ 115-334. **Solicitors.**—All persons soliciting students within the State of North Carolina for commercial colleges, business schools or correspondence schools located within or without the State of North Carolina, shall be required to secure on July first of each year an annual license from the State Board of Education, such license to cost two dollars (\$2.00). When application is made for such license by a solicitor he shall submit to said Board for its approval a copy of the contract offered prospective students and used by his said school, together with advertising material and other representations made by said school to its students or prospective students. When a license is issued to such solicitor he shall receive a license card permitting him to solicit students for his school, but such license shall be issued only on an annual basis expiring June thirtieth of each year and must be renewed to entitle such solicitor to solicit students thereafter. Every commercial college, business school, or correspondence school employing such solicitors shall be responsible for the acts, representations and contracts made by its solicitors. Any person soliciting students for any such schools without first having secured a license from the State Board of Education shall be guilty of a misdemeanor and be punishable by a fine of fifty dollars (\$50.00) or thirty days imprisonment, or both, at the discretion of the court. (1937, c. 184; 1943, c. 721, s. 6.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "Board of Commercial Education."

SUBCHAPTER XX. OBSERVANCE OF SPECIAL DAYS.

ARTICLE 48.

Special Days to Be Observed in Public Schools.

§ 115-335. **North Carolina Day.**—The twelfth day of October in each and every year, to be called "North Carolina Day," may be devoted, by appropriate exercises in the public schools of the State, to the consideration of some topic or topics of our State history, to be selected by the Superintendent of Public Instruction: Provided, that if the said day shall fall on Saturday or Sunday, then the celebration shall occur on the Monday next following: Provided, further, that if the said day shall fall at a time when any such schools may not be in session, the celebration may be held within one month from the beginning of the term, unless the Superintendent of Public Instruction shall designate some other time. (1923, c. 136, s. 367; C. S., s. 5780(n).)

§ 115-336. **Temperance or Law and Order Day.**—There shall be one day in each scholastic year of the public and high schools of the State of North Carolina, to be known as Temperance or Law and Order Day, and the fourth Friday in January in each year, or some other day to be set by the Superintendent of Public Instruction to suit local conditions, is hereby designated as Temperance or Law and Order Day. This day shall be observed as such in each public and high school of the State, or if preferred, in each subdivision thereof. The State Superintendent of Public Instruction shall have prepared and furnished in due time to every teacher of said public and high school for the State a suitable program to be used on said Temperance or Law and Order Day.

The State Superintendent of Public Instruction may have prepared and furnished to the teachers in the public and high schools placards printed in large type which shall set forth in attractive style statistics, epigrams, mottoes; and up-to-date scientific truths showing the evils of intemperance and lawlessness.

When placards are distributed it shall be the duty of every teacher in the

State, paid entirely or in part out of the public funds, to keep posted in a conspicuous place in the schoolroom occupied by said teacher one of said placards. (1923, c. 136, s. 368; C. S., s. 5780(o).)

§ 115-337. **Arbor Day.**—Friday following the fifteenth day of March of each year shall be known as Arbor Day, to be appropriately observed by the public schools of the State. The Superintendent of Public Instruction shall issue each year a program for its observance by the school children of the State in order that they may be taught to appreciate the true value of trees and forests to their State. The Superintendent of Public Instruction is authorized to provide a suitable program and plan of instruction to county school officials under his charge for the appropriate observance of this day. (1923, c. 136, s. 369; C. S., s. 5780(p); 1927, c. 73.)

§ 115-338. **Other days.**—The Superintendent of Public Instruction is hereby authorized to provide suitable material for the proper observance in schools of the birthdays of Washington, Lee, Jackson, of Armistice Day, Memorial Day, and such other days as may be deemed of educational and patriotic value not only to the children but to the citizens of the State. All literature necessary for the proper observance of the days specified in this article shall be prepared by the Superintendent of Public Instruction and printed at the expense of the State. (1923, c. 136, s. 370; C. S., s. 5780(q).)

Cross Reference.—As to observance of "Indian Day" in the public schools, see § 147-18.

§ 115-339. **Combined programs.**—The State Superintendent of Public Instruction may fix a later or an earlier date for the observance of any special day the observance of which is required for a specific date if it shall appear to him to be more convenient; and he may combine the programs required to be issued in the foregoing sections so as to require the observance of any two or more of the special days at the same time. (1923, c. 136, s. 371; C. S., s. 5780(r).)

SUBCHAPTER XXI. COMPENSATION TO CHILDREN INJURED IN SCHOOL BUSES.

ARTICLE 49.

Certain Injuries to School Children Compensable.

§ 115-340. **State Board of Education authorized to pay claims.**—The State Board of Education of North Carolina is hereby authorized and directed to set up in its budget for the operation of the public schools of the State a sum of money which it deems sufficient to pay the claims hereinafter authorized and provided for. (1935, c. 245, s. 1; 1943, c. 721, s. 7.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-341. **Payment of medical or funeral expenses to parents or custodians of children.**—The State Board of Education is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor, or administrator of any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the State, or from the operation of said bus on the school grounds or in transporting children to and from the public schools of the State, medical, surgical, hospital, and funeral expenses incurred on account of such injuries and/or death of such child in

an amount not to exceed the sum of six hundred and no one-hundredths dollars (\$600.00). (1935, c. 245, s. 2; 1943, c. 721, s. 7; 1945, c. 970, s. 3.)

Local Modification.—Surry: 1935, c. 458.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1945 amendment inserted the words

"or from the operation of said bus on the school grounds or in transporting children to and from the public schools of the State."

§ 115-342. Claim must be filed within one year.—The right to compensation as authorized under § 115-341 shall be forever barred, unless a claim be filed with the State Board of Education within one year after the accident, and if death results from the accident, unless a claim be filed with the said Board within one year thereafter. (1935, c. 245, s. 3; 1943, c. 721, s. 7.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-343. Approval of claims by State Board of Education final.—The State Board of Education is hereby authorized and empowered, under rules and regulations to be promulgated by said State Board of Education to approve any claim authorized by this subchapter, and when such claim is so approved, such action shall be final; any payment made by the State Board of Education for hospital and medical treatment shall be deducted from the benefits provided in § 115-341, and said Board is hereby authorized to pay medical and hospital and funeral bills provided for in this subchapter, not to exceed, however, the benefits herein provided for. (1935, c. 245, s. 4; 1943, c. 721, s. 7.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-344. Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child.—The claims authorized in § 115-341 shall be paid by the said State Board of Education, regardless of whether or not the injury received by said school child shall have been due to the negligence of the driver of the said school bus: Provided that whenever there is recovery on account of said accident by the father, mother, guardian, or administrator of such child, against any person, firm, or corporation, the amount expended by the State Board of Education hereunder shall constitute a paramount lien on any judgment recovered by said parent, guardian, or administrator, and shall be discharged before any money is paid to said parent, guardian, or administrator, on account of said judgment. (1935, c. 245, s. 5; 1943, c. 721, s. 7.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-345. Disease and injuries incurred while not riding on bus not compensable.—Nothing in this subchapter shall be construed to mean that the State shall be liable for sickness, disease, and for personal injuries sustained while not actually riding on the bus to and from the school, and for personal injuries received otherwise than by reason of the operation of such bus. (1935, c. 245, s. 6.)

§ 115-346. Application to terms additional to nine months' term.—The provisions of this subchapter shall be applicable to any school child, who may be injured and/or whose death results from injuries received while such child is riding on a school bus to and from the public schools of the State during any term of public school additional to the regular school term paid for by the State: Provided, that nothing herein contained shall be construed as imposing

any obligation upon the State Board of Education to provide funds for this purpose. The tax levying authorities of any school district which provides a supplement for the maintenance of an additional school term are hereby authorized and directed to set up in their respective budgets a sum of money which is deemed sufficient to pay the claims authorized by this subchapter, and to pay out of such sum the expenses authorized to be paid in accordance with the provisions of this subchapter. No person, firm, or corporation making voluntary contributions for an extended term shall be liable on account of any accident or injury. (1939, c. 267; 1943, c. 255; 1943, c. 721, s. 7.)

Editor's Note. — Formerly, the words "the ninth month, or" appeared between the word "during" and the word "any," and the words "eight months" appeared between the word "regular" and the word "school" in the first sentence. The words "a ninth month or" appeared between the word "of" and the word "additional" in the

second sentence. These words were deleted and the words "paid for by the State" were inserted just before the proviso to reflect the first 1943 amendment as authorized by Session Laws 1943, c. 15, s. 3. The second 1943 amendment substituted "State Board of Education" for "State School Commission."

SUBCHAPTER XXII. SCHOOL LAW OF 1939.

ARTICLE 50.

The School Machinery Act.

§ 115-347. **Purpose of the law.**—The purpose of this subchapter is to provide for the administration and operation of a uniform system of public schools of the State for the term of nine months without the levy of an ad valorem tax therefor, and it is the purpose of this General Assembly to change the policy heretofore followed by previous General Assemblies of re-enacting biennially the School Machinery Act, and this subchapter shall remain in force until repealed or amended by subsequent acts of the General Assembly. It is also the purpose of this subchapter to establish a minimum program of education in order that substantial equality of educational opportunity may be available to all children of the State. (1939, c. 358, s. 1(a); 1943, c. 255, s. 2; 1949, c. 1116, s. 1.)

Local Modification. — Hyde, Ocracoke Island: 1937, c. 303.

Editor's Note. — The 1943 amendment substituted "nine months" for "eight months" in the first sentence, and the 1949 amendment added the second sentence.

The following cases were decided under similar or identical provisions of the former law.

Purpose of School Machinery Act.—The purpose of this Act is to promote efficiency in the organization and economy in the administration of the public schools, and to provide for the operation of a uniform system of schools for the entire State. This signifies that the State has adopted a policy of supporting its public schools and has consequently in part modified and in part abolished the former system. *Evans v. Mecklenburg County*, 205 N. C. 560, 172 S. E. 323 (1934).

Other Statutes Are Subordinate to Act.—The School Machinery Act indicates a legislative intent to annul or to subordinate to the new law all statutes relating to the public schools which were in effect

at the time of its enactment and to establish a uniform system under which all the public schools of the state shall be conducted. *Evans v. Mecklenburg County*, 205 N. C. 560, 172 S. E. 323 (1934).

The authority of a county to issue without a vote bonds for sanitary improvements for its schoolhouses necessary to maintain the constitutional school term was not affected by the School Machinery Act of 1933. *Taylor v. Board of Education*, 206 N. C. 263, 173 S. E. 608 (1934). See §§ 115-92, 153-77.

Abolition of Special School Districts.—For cases construing former statute abolishing special school districts, see *Board of Education v. Burgin*, 206 N. C. 421, 174 S. E. 286 (1934) (use of unexpended fund by new district); *Hickory v. Catawba County*, 206 N. C. 165, 173 S. E. 56 (1934), holding that statute did not alter the policy that under the provisions of § 115-158 a county may include in its debt service fund in its budget the indebtedness lawfully incurred by any of its school districts.

Special Statute Not Repealed.—Chapter

279, Public-Local Laws of 1937, providing for the establishment of special tax school districts in Buncombe County, was not repealed by implication by the School Machinery Act of 1937, since the special statute prevailed as an exception to the gen-

eral statute. *Fletcher v. Collins*, 218 N. C. 1, 9 S. E. (2d) 606 (1940).

Cited in *Mears v. Board of Education*, 214 N. C. 89, 197 S. E. 752 (1938); *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-348. Appropriation.—The appropriation made under Title nine “(IX-1)-Support of Eight Months’ Term Public Schools,” of “an act to make appropriations for the maintenance of the State’s departments, bureaus, institutions, and agencies, and for other purposes,” and such funds as may be made available by acts of the Congress of the United States for public schools, and such other funds as may be made available from all other sources for the support of the eight months’ term public schools, for the year ending June thirtieth, one thousand nine hundred forty, and annually thereafter, shall be apportioned for the operation of a nine months’ school term as hereinafter provided. (1939, c. 358, s. 1(b); 1943, c. 255, s. 2.)

Editor’s Note.—The 1943 amendment substituted “nine months” for “eight months” near the end of the section.

§ 115-349: Repealed by Session Laws 1943, c. 721, s. 8.

Editor’s Note.—The repealed section related to the former State School Commission, the forerunner of the State Board of Education.

§ 115-350. Administration of funds for nine months’ term; executive committee.—In addition to the duties and powers vested in the State Board of Education as set out in § 115-349, together with such powers as may be conferred by law, it shall be the duty of the said Board in accordance with the provisions of this subchapter, to administer funds for the operation of the schools of the State for one hundred eighty days on standards to be determined by said Board and within the total funds set out in § 115-348. The State Board of Education may designate from its membership an executive committee, which executive committee shall perform such duties as may be prescribed by State Board of Education. The secretary shall keep a record of the proceedings of any meetings of the executive committee in the same manner as proceedings of the full Board are kept and recorded. The controller appointed by the State Board of Education shall approve such employees as work under his direction in the administration of the fiscal affairs of the State Board of Education. (1939, c. 358, s. 3; 1943, c. 255, s. 2; 1943, c. 721, ss. 7, 8; 1945, c. 530, s. 12.)

Editor’s Note.—The first 1943 amendment substituted in the first sentence the words “one hundred eighty” for the words “one hundred sixty.” The second 1943 amendment substituted “State Board of

Education” for “State School Commission,” and rewrote the last three sentences. The 1945 amendment substituted “controller” for “comptroller” in the last sentence.

§ 115-351. Length of school term; school month defined; payment of salaries.—The minimum six months’ school term required by article IX of the Constitution is hereby extended to embrace a total of one hundred and eighty days of school in order that there shall be operated in every county and district in the State a uniform term of nine months: Provided, that the State Board of Education or the governing body of any administrative unit, with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of sixty days of said term of one hundred and eighty days, when in the sound judgment of the State Board of Education or the governing body of any administrative unit, with the approval of the State Board of Education, the low average of daily attendance in any school justifies such suspension, or when the State Board of Education or

the governing body of any administrative unit, with the approval of the State Board of Education, shall find that the needs of agriculture, or any other condition, may make such suspension necessary within such unit or any district thereof: Provided further, that when the operation of any school is suspended no teacher therein shall be entitled to pay for any portion of the suspended term: Provided, that all schools served by the same school bus or busses shall have the same opening date.

Provided that for the one thousand nine hundred and forty-seven—one thousand nine hundred and forty-eight and one thousand nine hundred and forty-eight—one thousand nine hundred and forty-nine school terms the one hundred and eighty days (180) may be reduced to one hundred and seventy days (170) by the Governor as Director of the Budget if in his opinion the revenues decrease to such an extent that such action would be justified.

A school month shall consist of twenty teaching days. Schools shall not be taught on Saturdays unless the needs of agriculture, or other conditions, in the unit or district make it desirable that schools be taught on such days. In order that the total term of one hundred and eighty days might be completed in a shorter time than nine calendar months, when the needs of agriculture require it, the governing body of any administrative unit may require that schools shall be taught on legal holidays, except Sundays, but nothing herein contained shall prevent the inclusion of teaching on any legal holiday in a school month in accordance with the custom and practice of any such district, or as may be otherwise ordered by the governing body of such administrative unit.

Salary warrants for the payment of all State teachers, principals, and others employed for the school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the State Board of Education on or before October first of each school year. Before such request shall be filed, it shall be approved by the governing board, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period less than nine months.

(1) Principals in the public schools of the State shall be employed for a term of ten (10) months and shall be paid on the basis of ten (10) months' service.

(2) The State Board of Education is authorized to prescribe what portion of said extra month shall apply before the opening of the school term and after the closing of the school year and to fix and regulate the duties of principals during said extra month.

(3) The State Board of Education may, in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of regular State allotted teachers in ten equal monthly payments. It shall also provide for the salaries of vocational teachers in such monthly payments as may be desirable and in accordance with rules and regulations prescribed for the operation of the vocational program and in accordance with federal laws and regulations relating to such funds.

Full authority is hereby given to the State Board of Education during any period of emergency to order general and, if necessary, extended recess or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any other emergency conditions make such action necessary.

(1939, c. 358, s. 4; 1943, c. 255, s. 1; 1945, c. 521; 1947, c. 1077, s. 2; 1949, c. 1116, s. 2.)

Local Modification.—Watauga: 1941, c. 27.

Cross References. — For definition of school day, see § 115-12. As to power of local school authorities to determine the length of a school day, see § 115-58.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission," increased the school term from eight to nine months and rewrote the section generally.

The 1945 amendment inserted paragraphs (1) and (2) following the fourth para-

graph.

The 1947 amendment struck out the words "which shall request the same" formerly appearing after the word "State" in line six of the first paragraph, and added the second proviso thereto. The amendment changed the years at the beginning of the second paragraph from 1943-1944 and 1944-1945 to 1947-1948 and 1948-1949.

The 1949 amendment inserted paragraph (3).

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

§ 115-352. School organization.—All school districts, special tax, special charter, or otherwise, as constituted on May 15, 1933, are hereby declared nonexistent as of that date; and it shall be unlawful for any taxes to be levied in said district for school operating purposes except as provided in this article. The State Board of Education, in making provision for the operation of the schools, shall classify each county as an administrative unit, and shall, with the advice of the county boards of education, make a careful study of the district organization as the same was constituted under the authority of § 4 of chapter 562 of the Public Laws of 1933, and as modified by subsequent School Machinery Act. The State Board of Education may modify such district organization when it is deemed necessary for the economical administration and operation of the State school system, and it shall determine whether there shall be operated in such district an elementary or a union school. Provisions shall not be made for a high school with an average daily attendance of less than sixty pupils, nor an elementary school with an average daily attendance of less than twenty-five pupils, unless a careful survey by the State Superintendent of Public Instruction and the State Board of Education reveals that geographic or other conditions make it impracticable to provide for them otherwise. Funds shall not be made available for such schools until the said survey has been completed and such schools have been set up by the said Board. School children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education.

It shall be within the discretion of the State Board of Education, wherever it shall appear to be more economical for the efficient operation of the schools, to transfer children living in one administrative unit or district to another administrative unit or district for the full term of such school without the payment of tuition: Provided, that sufficient space is available in the buildings of such unit or district to which the said children are transferred: Provided further, the provision as to the nonpayment of tuition shall not apply to children who have not been transferred as set out in this section.

City administrative units as now constituted shall be dealt with by the State school authorities in all matters of school administration in the same way and manner as are county administrative units: Provided, that the State Board of Education may, in its discretion, alter the boundaries of any city administrative unit and establish additional city administrative units when, in the opinion of the State Board of Education, such change is desirable for better school administration. Provided, that in all city administrative units as now constituted the trustees of the said special charter districts, included in said city administrative unit, and their duly elected successors, shall be retained as the governing body of such district; and the title to all property of the said special charter district shall remain with such trustees, or their duly chosen successors; and the title to all school property hereafter acquired or constructed within the said city administrative unit, shall be taken and held in the name of the trustees of the said

city administrative unit; and the county board of commissioners of any county shall provide funds for the erection or repair of necessary school buildings on property, the title to which is held by the board of trustees as aforesaid, and the provisions of § 115-88, to the extent in conflict herewith, are hereby repealed: Provided, that nothing in this subchapter shall prevent city administrative units, as now established, from consolidating with the county administrative unit in which such city administrative unit is located, upon petition of the trustees of the said city administrative unit and the approval of the county board of education and the county board of commissioners in said county: Provided, further, that nothing in this subchapter shall affect the right of any special charter district, or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by existing law, and nothing herein shall be construed to restrict the county board of education and/or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by existing law.

The board of trustees for any special charter district in any city administrative unit shall be appointed as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of such board of trustees, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county board of education of the county embracing such special charter district. (1939, c. 358, s. 5; 1943, c. 721, s. 8; 1945, c. 970, s. 4; 1947, c. 1077, ss. 3, 6.)

Cross References.—As to authority of State Board of Education to alter or dissolve city school administrative units, see § 115-361.1. As to tuition of children in certain tax districts, see § 115-214.

Editor's Note.—The 1943 amendment substituted "State Board of Education" for "State School Commission." The 1945 amendment inserted the first proviso in the third paragraph. The 1947 amendment made changes in said proviso and added the last sentence of the first paragraph.

Assumption of Payment as County-Wide Obligation.—Where bonds to provide funds for buildings and equipment have been voted by special school districts and by a city constituting a special charter district which has since become a part of the general county schools, the county may assume the payment of such bonds as a county-wide obligation, and it is not necessary that payment therefor be made

from taxes levied only in such special districts. *Reeves v. Board of Education*, 204 N. C. 74, 167 S. E. 454 (1933).

Since under § 115-83 it is the duty of the county commissioners of each county to provide for the construction and equipment of schools in each district necessary to the maintenance of the constitutional school term, where some of the school districts of the county provide the necessary buildings and equipment upon failure of the county to do so, by issuing school bonds or otherwise, the county may assume such indebtedness upon the request of its board of education. *Marshburn v. Brown*, 210 N. C. 331, 186 S. E. 265 (1936).

Applied in *Mebane Graded School Dist. v. Alamance County*, 211 N. C. 213, 189 S. E. 873 (1937). See *East Spencer v. Rowan County*, 212 N. C. 425, 193 S. E. 837 (1937).

Cited in *Coggins v. Board of Education*, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

§ 115-353. Administrative officers.—The administrative officer in each of the units now designated shall be a county superintendent of schools for a county administrative unit and a city superintendent of schools for a city administrative unit.

The salaries of county superintendents and city superintendents shall be in accordance with a State standard salary schedule to be fixed and determined by the State Board of Education as provided for in § 115-359; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and

such schedule shall be published in the same way and manner as the schedules for teachers' and principals' salaries are now published: Provided, that it shall be lawful for the county superintendent of schools in any county, with the approval of the State Superintendent of Public Instruction, to serve as principal of a high school of said county; and the sum of not exceeding three hundred dollars (\$300.00), to be paid from State instructional service funds, may be added to his salary and shall be included in the budget approved by the State Board of Education: Provided, further, that a county superintendent may also be elected and serve as a city superintendent in any city administrative unit in the county which he serves as county superintendent: Provided, further, that a county superintendent may serve as welfare officer and have such additional compensation as may be allowed by the county commissioners of such county, to be paid from county funds, subject to the approval of the State Board of Education.

At a meeting to be held the first Monday in April, one thousand nine hundred thirty-nine, or as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in January of such year shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education, who shall take office July first and shall serve for a period of two years, or until his successor is elected and qualified. The county board of education shall give public notice of the date of the election in a paper published or circulating in the county and shall post a notice of the same at the courthouse door at least fifteen days before the date of the election. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools is a graduate of a four year standard college, or at the present time holds a superintendent's certificate, and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious disease, shall make any citizen of the State eligible for this office. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

In all city administrative units, the superintendent of schools shall be elected by the board of trustees, or other school governing agency of such unit, to serve for a period of two years; and the qualifications, approval, and date of election shall be the same as for county superintendents. The city superintendent is hereby ex officio secretary to the governing body of said city administrative unit.

At its first regular meeting in April or as soon thereafter as practicable, the board of trustees, or other governing board of a city administrative unit, shall elect principals, teachers, and other necessary employees of the schools within said unit on the recommendation of the city superintendent. (1923, c. 136, s. 43; C. S., s. 5452; 1939, c. 358, s. 6; 1943, c. 721, s. 8; 1951, c. 1027, s. 3½.)

Local Modification.—Currituck: 1945, c. 899.

Cross Reference.—As to county superintendents in general, see § 115-102 et seq.

Editor's Note.—The 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1951 amendment inserted the words "named by the General Assembly which convened in January of such year" in the third paragraph.

For act making this section applicable to Tyrrell County in all respects on and after

July 1, 1953, see Session Laws 1951, c. 1093.

Constitutional Office.—The office of county of superintendent of public instruction is such an office as comes within the provision of Art. XIV, § 7, of the Constitution, which prohibits the holding of more than one office by any person. *Whitehead v. Pittman*, 165 N. C. 89, 80 S. E. 976 (1914).

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

§ 115-354. School committees.—At the first regular meeting during the month of April, one thousand nine hundred thirty-nine, or as soon thereafter as practicable, and biennially thereafter, the county boards of education shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three nor more than five persons for each school district, whose term of office shall be for two years: Provided, that in the event of death or resignation of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term: Provided, that in units desiring the same, by action of the county board of education and subject to the approval of the State Board of Education, one-third of the members may be selected for a term of one year, one-third of the members for a term of two years, and one-third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms.

The district committees shall elect the principals for the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The principals of the districts shall nominate and the district committees shall elect the teachers for all the schools of the districts, subject to the approval of the county superintendent of schools and the county board of education. The distribution of the teachers between the several schools of the district shall be subject to the approval of the county board of education. In the event the local school authorities herein provided for are unable to agree upon the nomination and election of teachers, the county board of education shall select the teacher or teachers, which selection shall be final for the ensuing school term. All principals and teachers shall enter into a written contract upon forms to be furnished by the State Superintendent of Public Instruction before becoming eligible to receive any payment from State funds. It shall be the duty of the county board of education in a county administrative unit, and of the governing body of a city administrative unit, to cause written contracts on forms to be furnished by the State to be executed by all teachers and principals elected under the provisions of this subchapter before any salary vouchers shall be paid: Provided that such contract shall continue from year to year until said teacher or principal is notified as provided in § 115-359: Provided, further, that such teacher or principal shall give notice to the superintendent of schools of the administrative unit in which said teacher or principal is employed, within ten days after notice of re-election of his or her acceptance of employment for the following year: Provided, further, that the county board of education may appoint an advisory committee of three members for each school building in the said school district, who shall care for the school property and perform such other duties as may be defined by the county board of education. (1939, c. 358, s. 7; 1941, c. 267, s. 2; 1943, c. 721, s. 8; 1945, c. 970, s. 5.)

Local Modification.—Montgomery: 1951 c. 718; Onslow: 1941, c. 149.

Cross References.—As to the duties and powers of school committees in general, see § 115-130 et seq. As to election of teachers, see also, § 115-134. As to power to dismiss, see § 115-143.

Editor's Note. — The 1941 amendment inserted the first and second provisos in the second paragraph.

The 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1945 amendment substituted, in the next to the last proviso in the second paragraph, the words "notice of re-election" for the words "the close of school."

Jurisdiction of County Board of Education to Elect Principal.—The county board of education is not authorized to elect a principal of a school unless it appears that the local school authorities are in disagreement as to such election, and therefore, in a suit to compel the county board to approve an election made by the local school authorities, a plea in abatement on the ground that the county board had already elected another to the position is properly overruled in the absence of a showing of disagreement by the local school authorities. Harris v. Board of Education, 216 N. C. 147, 4 S. E. (2d) 328 (1939).

Removal of Committeeman. — A school committeeman for a district, although ap-

pointed by the county board of education, holds for a definite term of two years and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. *Russ v. Board of Education*, 232 N. C. 128, 59 S. E. (2d) 589 (1950).

Notice of acceptance of a teacher con-

tract or an extension thereof must be given within the time prescribed by this section in order to have the benefit of this provision extending the teacher's contract for another year. *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

Cited in *Davis v. Moseley*, 230 N. C. 645, 55 S. E. (2d) 329 (1949).

§ 115-355. Organization statement and allotment of teachers. — On or before the twentieth day of May in each year, the several administrative officers shall present to the State Board of Education a certified statement showing the organization of the schools in their respective units, together with such other information as said Board may require. The organization statement as filed for each administrative unit shall indicate the length of term the State is requested to operate the various schools for the following school year, and the State shall base its allotment of funds upon such request. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the State Board of Education may promulgate, the State Board of Education shall determine for each administrative unit, by districts and races, the number of elementary and high school teachers to be included in the State budget on the basis of the average daily attendance figures of the continuous six months' period of the first seven months of the preceding year during which continuous six months' period the average daily attendance was highest: Provided that loss in attendance due to epidemics or apparent increase in attendance due to the establishment of army camps or other national defense activities shall be taken into consideration in the initial allotment of teachers: Provided, further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance: Provided, further, that for the duration of the present war and for the first school term thereafter, it shall be the duty of the State Board of Education to provide any school in the State of North Carolina having four high school teachers or less and/or four elementary teachers or less not less than the same number of teachers as were allotted to said school for the school year of one thousand nine hundred and forty-four—one thousand nine hundred and forty-five: Provided, further, that in cases where there are less than twenty (20) pupils per teacher in any school a reduction in the number of teachers may be made.

The provisions of this section as to the allotment of teachers shall apply only to those schools where the reduction in enrollment is shown to be temporary as determined by the State Board of Education.

It shall be the duty of the governing body in each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the State Board of Education to make changes in the allocation of teachers to meet requirements of the said unit.

In order to provide for the enrichment and strengthening of educational opportunities for the children of the State, the State Board of Education is authorized in its discretion to make an additional allotment of teaching personnel to the county and city administrative units of the State, either jointly or separately as the State Board of Education may prescribe, and such persons may be used in said administrative units as librarians, attendance assistants, special teachers or supervisors of instruction and for other special instructional service, such as art, music, adult education, special education, or industrial arts as may be authorized and approved by the State Board of Education. The salaries of such personnel shall be determined in accordance with the State salary schedule adopted by the State Board of Education. In addition, the State Board of Education is authorized and empowered, in its discretion, to make allotments of funds

for clerical assistants for classified principals. (1939, c. 358, s. 8; 1941, c. 267, s. 3; 1943, c. 255, s. 2¾; 1943, c. 720, s. 1; 1943, c. 721, s. 8; 1945, c. 970, ss. 6, 14; 1949, c. 1116, s. 3.)

Editor's Note. — The 1941 amendment made changes in the first proviso to the first paragraph and added the second proviso thereto.

The first 1943 amendment inserted in the third sentence of the first paragraph the provision as to average daily attendance. The second 1943 amendment added the third proviso to the paragraph, and inserted the second paragraph. The third 1943 amendment substituted "State Board

of Education" for "State School Commission."

The 1945 amendment inserted the words "first seven months of the" in the third sentence of the first paragraph. It also rewrote the third proviso in the first paragraph and added the last proviso thereto.

The 1949 amendment added the last paragraph.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

§ 115-356. Objects of expenditure.—The appropriation of State funds, as provided under the provisions of this subchapter, shall be used for meeting the costs of the operation of the public schools as determined by the State Board of Education, for the following items:

1. General Control:
 - a. Salaries of superintendents
 - b. Travel of superintendents
 - c. Salaries of clerical assistants for superintendents
 - d. Office expense of superintendents
 - e. Per diem county boards of education in the sum of one hundred dollars (\$100.00) to each county
 - f. Audit of school funds
2. Instructional Service:
 - a. Salaries for white teachers, both elementary and high school
 - b. Salaries for colored teachers, both elementary and high school
 - c. Salaries of white principals
 - d. Salaries of colored principals
 - e. Instructional supplies
3. Operation of Plant:
 - a. Wages of janitors
 - b. Fuel
 - c. Water, light and power
 - d. Janitor's supplies
 - e. Telephone expense
4. Auxiliary Agencies:
 - a. Transportation
 - (1) Drivers and contracts
 - (2) Gas, oil, and grease
 - (3) Mechanics
 - (4) Parts, tires, and tubes
 - (5) Replacement busses
 - (6) Compensation for injuries and/or death of school children as now provided by law
 - b. Libraries
 - c. Health
 - d. Workmen's compensation for school employees.

In allotting funds for the items of expenditures hereinbefore enumerated, provision shall be made for a school term of only one hundred eighty days.

The State Board of Education shall effect all economies possible in providing State funds for the objects of general control, operation of plant, and auxiliary agencies, and after such action shall have authority to increase or decrease on a uniform percentage basis the salary schedule of teachers, principals, and superintendents in order that the appropriation of State funds for the public schools

may insure their operation for the length of term provided in this subchapter: Provided, however, that the State Board of Education and county boards of education for county administrative units and boards of trustees for city administrative units, shall have power and authority to promulgate rules by which school buildings may be used for other purposes.

The objects of expenditure designated as maintenance of plant and fixed charges shall be supplied from funds required by law to be placed to the credit of the public school funds of the county and derived from fines, forfeitures, penalties, dog taxes, and poll taxes, and from all other sources except State funds: Provided, that when necessity shall be shown, and upon the approval of the county board of education or the trustees of any city administrative unit, the State Board of Education may approve the use of such funds in any administrative unit to supplement any object or item of the current expense budget, including the supplementing of the teaching of vocational subjects; and in such cases the tax levying authorities of the county administrative unit shall make a sufficient tax levy to provide the necessary funds for maintenance of plant, fixed charges, and capital outlay: Provided, further, that the tax levying authorities in any county administrative unit may levy taxes to provide necessary funds for teaching vocational agriculture and home economics and trades and industrial vocational subjects supported in part from federal vocational educational funds: Provided, further, that nothing in this subchapter shall prevent the use of federal and/or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may provide: Provided further, that the tax levying authorities in any county administrative unit may levy taxes to provide necessary funds for attendance enforcement, supervision of instruction, health and physical education, clerical assistance, and accident insurance for school children transported by school bus: Provided, that nothing in this section be interpreted as repealing the present statutes requiring the State Board of Education's approval of local unit budgets. (1939, c. 358, s. 9; 1943, c. 255, s. 2; 1943, c. 721, s. 8; 1947, c. 1077, ss. 7, 7½.)

Cross Reference. — As to procedure "State School Commission." where county commissioners refuse to levy school tax, see § 115-160.

Editor's Note. — The first 1943 amendment changed the term from one hundred sixty days to one hundred eighty days. The second 1943 amendment substituted "State Board of Education" for

The 1947 amendment added subhead 4d, struck out the words "with the approval of the State Board of Education" formerly appearing after the word "unit" in the second proviso in the last paragraph and added the last two provisos thereto.

§§ 115-357, 115-358: Repealed by Session Laws 1945, c. 530, s. 13.

§ 115-359. **State standard salary schedule.**—The State Board of Education shall fix and determine a State standard salary schedule for teachers, principals, and superintendents, which shall be the maximum standard State salaries to be paid from State funds to the teachers, principals, and superintendents; and all contracts with teachers and principals shall be made locally by the county board of education and/or the governing authorities of city administrative units, giving due consideration to the peculiar conditions surrounding each employment, the competency and experience of the teacher or principal, the amount and character of work to be done, and any and all other things which might enter into the contract of employment: Provided, however, that the compensation contracted to be paid out of State funds to any teacher, principal, or superintendent shall be within the maximum salary limit to be fixed by the State Board of Education, as above provided, and within the allotment of funds as made to the administrative unit for the item of instructional salaries: Provided, further, that no teacher or principal shall be required to attend summer school during the years one thousand nine hundred forty-five and one thousand nine hundred forty-six, and the certificate of such teacher or principal as may

have been required to attend such school shall not lapse but shall remain in full force and effect, and all credits earned by summer school and/or completing extension course or courses shall not be impaired, but shall continue in full force and effect.

Any teacher or principal desiring election as teacher or principal in a particular administrative unit who was not employed by said unit during a current year shall file his or her application in writing, with the county or city superintendent of schools.

It shall be the duty of such county superintendent or administrative head of a city administrative unit to notify all teachers and/or principals now or hereafter employed, by registered letter, of his or her rejection prior to the close of the school term subject to the allotment of teachers made by the State Board of Education: Provided, further, that principals and teachers desiring to resign must give not less than thirty days' notice prior to opening of school in which the teacher or principal is employed to the official head of the administrative unit in writing. Any principal or teacher violating this provision may be denied the right to further service in the public schools of the State for a period of one year unless the county board of education or the board of trustees of the administrative unit where this provision was violated waives this penalty by appropriate resolution.

In the employment of teachers, no rule shall be made or enforced which discriminates with respect to the sex, marriage, or nonmarriage of the applicant.

In the event a teacher is rejected under the provisions of this section, such rejection shall be subject to the approval or disapproval of the governing authorities of the administrative unit in which said teacher is employed. (1939, c. 358, s. 12; 1941, c. 267, ss. 4, 5; 1943, c. 720, s. 2; 1943, c. 721, s. 8; 1945, c. 970, s. 7.)

Cross References.—As to contracts with teachers, see § 115-119. As to application for teaching position, see § 115-141. As to penalty for resigning without proper notice, see also, § 115-142. As to authority of county superintendent to suspend teachers, see § 115-117.

Editor's Note. — The 1941 amendment made changes in the proviso at the end of the first paragraph, inserted the provision relative to administrative unit in the second paragraph, and changed the first sentence of the third paragraph.

The first 1943 amendment changed the years in the proviso at the end of the first paragraph from 1941-1942 to 1943-1944. It also added the last paragraph. The second 1943 amendment struck out the words "and the State School Commission" formerly appearing after the words "State Board of Education" in the first paragraph, and substituted "Board of Education" for "School Commission" in the third paragraph.

The 1945 amendment changed the years mentioned in the last proviso of the first paragraph.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

Notification of the rejection of a teacher required by this section is complete when the letter containing it is both mailed and registered. *Davis v. Moseley*, 230 N. C. 645, 55 S. E. (2d) 329 (1949).

Where a letter containing notification of the rejection of a teacher is registered and mailed to her prior to the close of the school term during which she was employed, there is a compliance with this section and it is sufficient to terminate the contract even though not received by the teacher until after the expiration of the school term. *Davis v. Moseley*, 230 N. C. 645, 55 S. E. (2d) 329 (1949).

Quoted in *Kirby v. Stokes County Board of Education*, 230 N. C. 619, 55 S. E. (2d) 322 (1949).

§ 115-359.1. Salary increments for experience to teachers, principals and superintendents serving in armed and auxiliary forces.—The State Board of Education, in fixing the State standard salary schedule of teachers, principals and superintendents as authorized by § 115-359, shall provide that teachers, principals and superintendents who entered the armed or auxiliary forces of the United States after September sixteenth, one thousand nine hundred and forty, and who left their positions for such service, shall be allowed experience in-

crements for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the positions of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1945, c. 272.)

§ 115-360. Principals allowed.—In all schools with fewer than fifty teachers allowed under the provisions of this subchapter, the principals shall be included in the number of teachers allowed. In schools with fifty or more teachers, one whole time principal shall be allowed; for each forty teachers in addition to the first fifty, one additional whole time principal, when and if actually employed, shall be allowed: Provided, that in the allocation of State funds for principals, the salary of white principals shall be determined by the number of white teachers employed in the white schools, and the salary of colored principals shall be determined by the number of colored teachers employed in the colored schools: Provided, further, that where the schools of a district are under the control of the same district committee, the district principal shall have general supervision of all the schools in the district: Provided, further, that where a white school and a colored school are both under the control of the same district committee, and where the principal of the white school is called upon by the district committee to perform certain duties in connection with the operation of the colored school such as aiding in the employment of teachers and in the general supervision of the colored school, the State Board of Education may in their discretion take such service into consideration in the fixing of the principal's salary and may make a reasonable allowance for same. (1939, c. 358, s. 13; 1941, c. 267, s. 6; 1943, c. 721, s. 8.)

Editor's Note. — The 1941 amendment "the State School Commission and" formerly appearing before the words "the State Board of Education" in the last proviso.

The 1943 amendment deleted the words

"the State School Commission and" formerly appearing before the words "the State Board of Education" in the last proviso.

§ 115-361. Local supplements.—The county board of education in any county administrative unit and the school governing board in any city administrative unit, with the approval of the tax levying authorities in said county or city administrative unit and the State Board of Education, in order to operate schools of a higher standard than that provided by State support in said administrative unit having a school population of five hundred (500) or more, but in no event to provide for a term of more than one hundred eighty (180) days, may supplement the funds from State or county allotments available to said administrative unit: Provided, that before making any levy for supplementing said allotments, an election shall be held in said administrative unit or district to determine whether there shall be levied a tax to provide said supplemental funds, and to determine the maximum rate which may be levied therefor. Upon the request of the county board of education in a county administrative unit and/or the school governing authorities in a city administrative unit, the tax levying authorities of such unit shall provide for an election to be held under laws governing such elections as set forth in articles 22, 23 and 24 of this chapter: Provided, that the rate voted shall remain the maximum until revoked or changed by another election: Provided, further, that nothing herein contained shall be construed to abolish any city administrative unit heretofore established under § 142-20 et seq.

Upon a written petition of a majority of the governing board of any district which has voted a supplementary tax, the county board of education, after approving the petition, shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of any such district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes as provided in this section: Provided, the local tax rate specified in

the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of those who shall vote thereon in such new territory shall vote in favor of such tax, the new territory shall be and become a part of said district, and the term "local tax of the same rate" herein used shall include, in addition to the usual local tax, any tax levied to meet the interest and sinking fund of any bonds heretofore issued by the district proposed to be enlarged. In case a majority of those who shall vote thereon at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed. (1939, c. 358, s. 14; 1943, c. 721, s. 8; 1949, c. 918, s. 7; 1951, c. 1034, s. 1.)

Cross References. — See § 115-192 and note. As to ratification of enlargements of school districts pursuant to this section, see note to § 115-31.2.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

Prior to the 1949 amendment the last two sentences of this section referred to "a majority of the qualified voters" instead of to "a majority of those who shall vote."

The 1951 amendment inserted "five hundred (500)" for "one thousand (1000)"

formerly appearing near the middle of the first sentence.

For brief comment on the 1949 amendment, see 27 N. C. Law Rev. 454.

Former Law.—The following cases were decided under similar provisions of the former law: *Forester v. North Wilkesboro*, 206 N. C. 347, 174 S. E. 112 (1934) (enjoining collection of special tax); *Freeman v. Charlotte*, 206 N. C. 913, 174 S. E. 453 (1934) (applying law); *Evans v. Mecklenburg County*, 205 N. C. 560, 172 S. E. 323 (1934) (citing law).

§ 115-361.1. Alteration or dissolution of city school administrative units; abolition of existing tax levies; new supplementary levies. — 1.

Alteration or Dissolution and Formation of City School Administrative Units.—The State Board of Education, upon the filing of a petition by any city administrative unit composed of two municipalities so requesting, may amend by enlarging, reducing, or dissolving any such city administrative unit and notwithstanding the population, create a new city administrative unit with boundaries coterminous with the boundaries of the township in which one of said municipalities is located and form a special school district containing the other municipality with boundaries coterminous with the township in which such municipality is situated.

2. Abolition of Existing Tax Levies.—Upon the altering by enlarging or reducing the boundaries of, or dissolving a city administrative unit as authorized in subsection one hereof, any existing special tax levy authorized by § 115-361 of the General Statutes of North Carolina shall terminate at the end of the fiscal year in which the boundaries of said unit are reduced or enlarged or the district dissolved.

3. Special Tax Levies Authorized.—A special tax levy is hereby authorized in any city administrative unit and a special tax levy of not more than fifteen cents (15c) on the one hundred dollars (\$100.00) valuation in a special school district created as herein authorized for the purpose of operating schools of a higher standard in such districts than provided by State support: Provided, that before making any levy for supplementing State allotments, an election shall be held in such administrative unit or district to determine whether there shall be levied a tax to provide supplemental funds for the operation of the schools in the district and to determine the maximum rate which may be levied therefor; such election to be held under existing election laws and regulations applicable to special school levies authorized in § 115-361 of the General Statutes of North Carolina for such supplements. (1945, c. 284.)

§ 115-362. County boards may supplement funds of any district for special purposes.—The county board of education in any county administrative unit, with the approval of the tax levying authorities in said unit and the State Board of Education, in order to operate schools of a higher standard than that

provided by State support, or to employ additional vocational teachers, or both, in any district in said county administrative unit having a school population of one thousand (1,000) or more, but in no event to provide for a term of more than one hundred and eighty days, may supplement the funds now available to said district: Provided, that before making any levy for supplementing said allotments, an election shall be held in said district to determine whether there shall be levied a tax to provide said supplemental funds and to determine the maximum rate which may be levied therefor. Before said election can be held in such district, a petition of the district committee setting out the purposes for which said election is to be had and the maximum rate of tax which may be levied shall be approved by the county board of education, the tax levying authorities of said county, and the State Board of Education. When such approval is had, then upon the request of the county board of education, the tax levying authorities of such unit shall provide for an election under the laws governing such elections as are set forth for county and city administrative unit supplementary elections in § 115-361. (1939, c. 358, s. 14½; 1943, c. 255, s. 2; 1943, c. 721, s. 8.)

Local Modification. — Orange (White Cross and Carrboro elementary school districts): 1951, c. 748.

Editor's Note. — The first 1943 amendment rewrote the part of the first sentence preceding the proviso. The second 1943 amendment substituted "State Board of Education" for "State School Commission" in the next to the last sentence.

Contribution to Retirement Fund.—The provision of this section under which a local unit desiring to supplement State support for the schools is required to submit the question to a popular vote is not

in deference to Art. VII, § 7, of the Constitution. It is simply the legislative adoption of a similar method of control over extravagant expenditure pro hac vice. It does not affect the status of the administrative unit as an agency of the State, and when the burden is assumed § 135-8 not only confers authority, but is mandatory in its provisions that the local administrative unit make its contribution to the State Retirement Fund, and that the taxing authorities therein provided the necessary funds. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

§ 115-363. Local budgets.—(a) The request for funds to supplement State school funds, as permitted under the above conditions, shall be filed with the tax levying authorities in each county and city administrative unit on or before the fifteenth day of June on forms provided by the State Board of Education. The tax levying authorities in such units may approve or disapprove this supplemental budget in whole or in part, and upon approval being given, the same shall be submitted to the State Board of Education, which shall have authority to approve or disapprove the same as to its financial soundness. In the event of approval by the State Board of Education, the same shall be shown in detail upon the minutes of said tax levying body, and a special levy shall be made therefor, and the tax receipt shall show upon the face thereof the purpose of said levy.

(b) In the same manner and at the same time, each county and/or city administrative unit may file a capital outlay budget, subject only to the approval of the tax levying authorities and the State Board of Education.

(c) In the same manner and at the same time, each county and/or city administrative unit shall file a debt service budget, which shall include debt service budgets of special bond tax districts, as set forth in § 115-364, and which shall be subject to the approval of the tax levying authorities in each such unit and the State Board of Education: Provided, that nothing in this subchapter shall prevent counties, local taxing districts and/or special charter districts from levying taxes to provide for debt service requirements.

The tax levying authorities in each of the above named units filing budgets from local funds shall report their action on said budgets on or before the tenth day of July, and the same shall be reported to the State Board of Education on or before the twentieth day of July. The action of the State Board of Education

on all requests for local funds budgets shall be reported to boards of education and/or school governing authorities of city administrative units and the tax levying authorities in such units on or before the twentieth day of August.

All county-wide current expense school funds shall be apportioned to county and city administrative units monthly, and it shall be the duty of the county treasurer to remit such funds monthly as collected to each administrative unit located in said county on a per capita enrollment basis. County-wide expense funds shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and including also all fines, forfeitures, penalties, poll and dog taxes and funds for vocational subjects.

All county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of budgets submitted by said units to the county commissioners and for the amounts and purposes approved by said commissioners. Capital outlay funds so provided for expenditure by the county administrative unit shall be paid out upon warrants drawn by the county board of education, and those provided for expenditure by a city administrative unit shall be paid out upon warrants drawn by the governing board of the city administrative unit: Provided, that funds derived from payments on insurance losses shall be used in the replacement of buildings destroyed, or in the event the buildings are not replaced, said funds shall be used to reduce the indebtedness of the special bond taxing unit to which said payment has been made, or for other capital outlay purposes within said unit. All county-wide debt service funds shall be apportioned to county and city administrative units and distributed at the time of collection and when available shall be expended in the same manner as are county-wide current expense school funds: Provided, that the payments to any administrative unit shall not exceed the actual needs of said units, including sinking fund requirements. The per capita enrollment basis shall be determined by the State Board of Education and certified to each administrative unit: Provided, further, that the debt service apportionment between county and city administrative units shall apply only to debt service for capital outlay obligations incurred by counties and cities prior to July 1, 1937, except in those counties where special legislation has been enacted providing for the issuance of school building bonds in behalf of school districts, and special bond tax units. The provisions of the last proviso shall not apply to refunding bonds issued for school capital outlay obligations. (1939, c. 358, s. 15; 1941, c. 200; 1941, c. 267, s. 7; 1943, c. 721, s. 8; 1951, c. 1027, s. 4.)

Cross References. — As to contents of school budgets, see § 115-157. As to deposit of school taxes collected with the county treasurer, see § 115-163.

Editor's Note. — The first 1941 amendment inserted the last proviso in the last paragraph of the section and added the sentence following. The second 1941 amendment made changes in the third paragraph of subsection (c).

The 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1951 amendment struck out the words "any object or item contained therein" and substituted the words "the same as to its financial soundness" in lieu thereof in subsection (a).

Apportionment of County-Wide Taxes.

—The principle upon which county-wide taxes were apportioned under the earlier law is fundamentally just and is preserved in the current School Machinery Act. *Board of School Trustees v. Benner*, 222 N. C. 566, 24 S. E. (2d) 259 (1943).

§ 115-364. School indebtedness.—If a boundary, territorial district, or unit in which a special bond tax has heretofore been voted or in any way assumed prior to July first, one thousand nine hundred thirty-three, has been or may be divided or consolidated, and the whole or a portion of which has been or may be otherwise integrated with a new district so established under any reorganization and/or redistricting, such territorial unit, boundary, or district, special taxing or special charter, which has been abolished for school operating purposes, shall

remain as a district for the purpose of the levy and collection of the special taxes theretofore voted in any unit, boundary, or district, special taxing or special charter, for the payment of bonds issued and/or other obligations so assumed, the said territorial boundary, district, or unit shall be maintained until all necessary taxes have been levied and collected therein for the payment of such bonds and/or other indebtedness so assumed. Such boundary, unit, or district shall be known and designated as the "..... Special Bond Tax Unit" of County.

All uncollected taxes which have been levied in the respective school districts for the purposes of meeting the operating costs of the schools shall remain as a lien against the property as originally assessed and shall be collectible as are other taxes so levied and, upon collection, shall be made a part of the debt service fund of the special bond tax unit, along with such other funds as may accrue to the credit of said unit; and in the event there is no debt service requirement upon such district, all amounts so collected for whatever purpose shall be covered into the county treasury to be used as a part of the county debt service for schools: Provided, that unpaid teacher's vouchers for the year in which the tax was levied shall be a prior lien: Provided, further, that nothing in this subchapter shall be construed as abolishing special taxes voted in any city administrative unit since July first, one thousand nine hundred thirty-three. (1939, c. 358, s. 16.)

§ 115-365. The operating budget.—It shall be the duty of the county board of education in each county and the school governing authorities in each city administrative unit, upon receipt of the tentative allotment of State funds for operating the schools and the approval of all local funds budgets, including supplements to State funds for operating schools of a higher standard, funds for debt service, and funds for capital outlay, to prepare an operating budget on forms provided by the State and file the same with the State Superintendent of Public Instruction and the State Board of Education on or before the first day of October. Each operating budget shall be checked by the State school authorities to ascertain if it is in accordance with the allotment of State funds and the approval of local funds; and when found to be in accordance with same, shall be the total school budget for said county or city administrative unit. (1939, c. 358, s. 17; 1943, c. 255, s. 2; 1943, c. 721, s. 8.)

Editor's Note.—The first 1943 amendment struck out the words "funds for extending the term" formerly appearing after the word "standard" in the first sentence. The second 1943 amendment substituted

"State Board of Education" for "State School Commission."

Cited in *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942) (con. op.).

§ 115-366. Bonds.—The State Board of Education shall, in its discretion, determine what State and local employees shall be required to give bonds for the protection of State school funds and for the faithful discharge of their duties as to such funds; and, in cases in which bonds are required, the State Board of Education is authorized to place the same and pay the premiums thereon.

The board of education in each county administrative unit and the trustees of each city administrative unit shall cause all persons authorized to draw or approve school checks or vouchers drawn on school funds, whether county, district, or special, and all persons who as employees of such administrative unit are authorized or permitted to receive any school funds from whatever source, and all persons responsible for or authorized to handle school property to be bonded for the faithful discharge of their duties as to such school funds in such amount as in the discretion of said governing authorities of said administrative unit shall deem sufficient for the protection of said school funds or property with surety by some surety company authorized to do business in the State of North Carolina. The amount deemed necessary to cover the cost of such surety bond shall

be included as an item in the general school budget of such school administrative unit and shall be paid from the funds provided therefor; but nothing in this section shall prevent the governing authorities of the respective administrative units from prorating the cost of such bond between the funds sought to be protected. (1939, c. 358, s. 18; 1943, c. 721, s. 8; 1945, c. 970, s. 8; 1949, c. 1082, s. 2; 1951, c. 1027, s. 5.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1945 and 1949 amendments rewrote the first and second paragraphs, respec-

tively.

The 1951 amendment inserted the words "as to such funds" in the first paragraph and the words "as to such school funds" near the middle of the second paragraph.

§ 115-367. Provision for the disbursement of State funds.—The deposits of State funds in the State treasury to the credit of the county and city administrative units may be made in monthly installments, at such time and in such amounts as may be practicable to meet the needs and necessities of the nine months' school term in the various county and city administrative units: Provided, that prior to the crediting of any monthly installment, it shall be the duty of the county board of education or the board of trustees to file with the controller of the State Board of Education a certified statement of all expenditures and of all salaries and other obligations that may be due and payable in the succeeding month, said statement to be filed on or before the first day of each month.

When it shall appear to the controller from said certified statement that any amounts are due and necessary to be paid, he shall draw a requisition on the State Auditor covering the same; and upon receipt of notice from the State Treasurer showing the amount placed to their credit, the duly constituted authorities may issue State warrants in the amount so certified: Provided, that no funds shall be released for payment of salaries of administrative officers of county or city units if any reports required to be filed with the State school authorities are more than thirty days overdue. (1939, c. 358, s. 19; 1943, c. 769; 1945, c. 530, s. 12.)

Editor's Note. — The 1943 amendment substituted "controller" for "comptroller". The 1945 amendment rewrote this section, and the 1945 amend-

§ 115-368. How school funds shall be paid out.—The school funds shall be paid out as follows:

1. **State School Funds.**—School funds shall be released only on warrants drawn on the State Treasurer signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the board of trustees for city administrative units, and countersigned by such officer as the county government laws may require.

2. **County and District Funds.**—All county and district funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and secretary of the board of education for counties and the chairman and the secretary of the board of trustees for city administrative units and countersigned by such officer as the county government laws may require: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of and are within the budget amounts appropriated for the particular administrative unit. Upon the basis of budget approval and upon receiving the certificate of per capita enrollment as set out in § 115-363, the county auditor or accountant shall ascertain and determine the proportion of all taxes levied by the county which shall be apportionable to the county administrative unit and any city administrative unit therein. As taxes are collected within said county, the proportion thereof allocable to the county administrative unit and any city administrative unit in said county shall be set up to the credit of such administrative unit by the county accountant or auditor. All funds due to the county administrative unit set up and ascertained as aforesaid shall be paid out as hereinbefore provided, and all

funds due any city administrative unit therein shall be paid out as hereinbefore provided.

The signatures of the chairman and secretary of the county board of education and the board of trustees of any city administrative unit required by subsections 1 and 2 hereof may be affixed to such warrants by a signature machine. When such machine is used on warrants drawn on the State Treasurer, the same may be used only in accordance with such rules and regulations as may be prescribed by the State Board of Education with the approval of the State Treasurer. The use of such signature machine shall not be employed in any county or city administrative unit until the governing board thereof has adopted a resolution authorizing the use of same and accepting the full responsibility for any unauthorized or improper use of such machine. In all cases, the secretary to the county board of education and the surety on his bond, or the secretary to the city administrative unit and the surety on his bond, making use of such signature machine, shall be liable for any illegal, improper or unauthorized use of such machine.

3. Special Funds of Individual Schools.—The board of education of a county administrative unit and the board of trustees of a city administrative unit shall, unless otherwise provided for by law, designate the bank, depository, or trust company authorized to do business in North Carolina in which all special funds of each individual school shall be deposited. Such funds shall be paid out only on checks signed by the principal of the school and the treasurer who has been selected by the respective boards; provided, this procedure for depositing and disbursing funds is not required for schools handling less than three hundred dollars (\$300.00), and if in the judgment of the boards of the respective administrative units such procedure should not be required. However, in all schools a complete record shall be kept by the treasurer and reports made of all money received and disbursed by him in handling funds of the school; provided, further, that nothing in this subsection 3 shall prevent the disbursing of all these special funds upon signatures required under the provisions of subsections 1 and 2 of this section.

4. Records and Reports.—The State Superintendent of Public Instruction and State Board of Education shall have full power and authority to make rules and regulations to prescribe the manner in which records shall be kept by all county and city administrative units as to the expenditure of current expense funds, capital outlay funds, and debt service funds, derived from local sources, and to prescribe for making reports thereof to the State Superintendent of Public Instruction.

5. Cashing Vouchers and Payment of Sums Due on Death of Teachers, etc.—In the event of the death of any superintendent, teacher or principal or other school employee before cashing any voucher which has been issued for services rendered or to whom a payment is due for services rendered in any amount not in excess of five hundred dollars (\$500.00), when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will be authorized to pay out such sums in the following manner: 1. For satisfaction of widow's year's allowance, if such is claimed. 2. For funeral expenses and medical and doctors' bills for the last illness of the deceased, and any taxes due the State or local government. If any surplus remains, the clerk of the superior court shall appoint an administrator and pay the surplus to the administrator. The clerk shall receive no commission for making such payment to the administrator, and the administrator shall receive no commission for receiving such surplus from the clerk. (1939, c. 358, s. 20; 1941, c. 267, s. 8; 1943, c. 721, s. 8; 1949, c. 1033, s. 1; 1949, c. 1082, s. 3; 1951, c. 380, s. 2; 1951, c. 1163, s. 1.)

Editor's Note. — The 1941 amendment sentence of subsection 2.

inserted the proviso at the end of the first The 1943 amendment substituted "State

Board of Education" for "State School Commission."

The first 1949 amendment added subsection 5. The second 1949 amendment inserted present subsection 3 and renumbered old subsection 3 as 4.

The first 1951 amendment deleted the words "and the balance, if any, as provided by law for the distribution of decedent's

estates", formerly appearing at the end of subsection 5, and substituted therefor the present last two sentences of the subsection. The second 1951 amendment inserted the second paragraph of subsection 2.

Cited in *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942) (con. op.).

§ 115-369. Audit of school funds.—All school funds shall be audited and reports made for each school year.

1. **State School Funds.**—The State Board of Education, in co-operation with the State Auditor, shall cause to be made an annual audit of the State school funds disbursed by county and city administrative units and such additional audits as may be deemed necessary.

2. **County and City Administrative Unit and District School Funds.**—The county board of education and the board of trustees of city administrative units, respectively, in co-operation with the State Board of Education, shall cause to be made an annual audit of all county, city, and district school funds, and the school boards shall provide for the payment of the cost thereof in the school budgets of the respective administrative units.

The annual audits shall be completed as near to the close of the year as practicable and copies of said audit shall be filed with the chairman and the secretary of the school governing body of the school administrative unit, the county auditor, the State Board of Education, the director of the local government commission, and the State Superintendent of Public Instruction not later than October 1st after the close of the fiscal year on June 30th. By October 1st after the close of the school year, a condensed statement of the report on the audit shall be published in some newspaper published in the county, or posted at the courthouse door if no newspaper is published in such county.

3. **Special Funds of Individual Schools.**—The county board of education and the board of trustees of city administrative units, respectively, shall cause to be made, at the time the audit of the county or city funds is made, an audit of the special school funds of each school in the respective administrative units. Such annual audits shall be completed as near to the close of the year as practicable and copies of said audit filed with the chairman and the secretary of the administrative unit in which the school is located and the State Board of Education not later than October 1st after the close of the fiscal year on June 30th.

4. **Payment of Audit Costs.**—The county board of education in a county administrative unit and the board of trustees in a city administrative unit shall include in the school budgets of the respective administrative units funds for the payment of the costs of the audits of county, city, district, and special funds of individual schools as required under subsections 2 and 3 of this section; provided, that nothing in this section shall prevent the respective boards from prorating the cost of auditing of special funds to the special funds of each school. (1939, c. 358, s. 21; 1943, c. 721, s. 8; 1949, c. 1082, s. 4; 1951, c. 1027, s. 6.)

Cross Reference.—See § 115-168.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for

"State School Commission" in this section, which was rewritten by the 1949 and 1951 amendments.

§ 115-370. Workmen's compensation and sick leave.—The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the State Board of Education shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising

out of and in the course of their employment in connection with the State operated nine months' school term. The State shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act, whether all of said compensation for the nine months' school term is paid from State funds or in part supplemented by local funds. The State shall also be liable for workmen's compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such employees. The county and city administrative units shall be liable for workmen's compensation for school employees whose salaries or wages are paid by such local units from local funds. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The State Board of Education is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall not be less than three dollars per day. The State Board of Education may provide to each administrative unit not exceeding one per cent (1%) of the cost of instructional service for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the State Board of Education, not exceeding the provisions made for other State employees.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds, while in attendance upon community, county and State meetings, called for specific purpose of promoting the agricultural interest of North Carolina, when such attendance is approved by the county superintendents of public instruction or the State Director of Vocational Education. (1939, c. 358, s. 22; 1943, c. 255, s. 2; 1943, c. 720, s. 3; 1943, c. 721, s. 8; 1945, c. 970, ss. 10, 11; 1947, c. 1077, s. 1; 1949, c. 1116, s. 5.)

Editor's Note. — The first 1943 amendment changed the school term from eight to nine months. The second 1943 amendment substituted the words "be less than" for the word "exceed" in the second sentence of the second paragraph. The third 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1945 amendment inserted the fourth sentence of the first paragraph and added the last paragraph. The 1947 amendment struck out a portion of the fifth sentence of the first paragraph to make it conform to the fourth sentence. The 1949 amendment added the third sentence of the second paragraph.

For comment on the 1943 amendment, see 21 N. C. Law Rev. 361.

Vocational Instruction. — This section purports to make the local county board of education liable "for workmen's compensation of school employees employed in connection with teaching vocational agri-

culture, home economics, trades and industrial vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such employees." The law is based on the equitable principle that the fund, provided for State-wide support of the public schools, most of which do not enjoy the privilege of vocational instruction as part of the curriculum, should not bear a burden more appropriate to a local enterprise, to which the State has given its aid. *Callihan v. Board of Education*, 222 N. C. 381, 23 S. E. (2d) 297 (1942).

Maintenance Work Paid for by Municipal Board.—The findings of fact of the Industrial Commission, supported by evidence, were to the effect that claimant employee was employed as janitor of a school for 8 months out of the year, his salary for this work being paid in part by the State School Commission, and was also employed in school maintenance work outside of his regular working hours as janitor and

during the remaining four months of the year, his compensation for maintenance work being paid exclusively by the municipal board of education, and that he was injured in the course of his employment in maintenance work after regular hours in a school of which he was not custodian. It was held that the findings support the conclusion of law that he was injured during

his employment by the municipal board of education and that the municipal board and its carrier are solely liable for compensation for his injury. *Casey v. Board of Education*, 219 N. C. 739, 14 S. E. (2d) 853 (1941).

Cited in *Hunter v. Board of Trustees*, 224 N. C. 359, 30 S. E. (2d) 384 (1944) (con. op.).

§ 115-371. Age requirement and time of enrollment.—Children to be entitled to enrollment in the public schools for the school year 1939-1940, and each year thereafter, must be six years of age on or before October first of the year in which they enroll, and must enroll during the first month of the school year. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child which shall be furnished upon request by the register of deeds of the county having on file the record of the birth of such child without charge or other satisfactory evidence of date of birth. (1939, c. 358, s. 22½; 1949, c. 1033, s. 1.)

Editor's Note. — The 1949 amendment added the second sentence.

§ 115-372. Purchase of equipment and supplies.—It shall be the duty of the county boards of education and/or the governing bodies of city administrative units to purchase all supplies, equipment and materials in accordance with contracts and/or with the approval of the State Division of Purchase and Contracts. Title to instruction supplies, office supplies, fuel, and janitorial supplies, enumerated under subsections one, two, and three of § 115-356, purchased out of State funds, shall be taken in the name of the county board of education and/or city board of trustees, which shall be responsible for the custody and replacement. Title to all busses, bus maintenance equipment, and materials and supplies used in the maintenance and operation of the school transportation system, enumerated in subsection four of § 115-356, purchased out of State funds shall be taken in the name of the State Board of Education and held by the county board of education for the use and benefit and subject to the direction of the State Board of Education: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1939, c. 358, s. 23; 1945, c. 970, s. 12.)

Local Modification. — City of Greensboro: 1951, c. 707, s. 5. inserted that part of the section between the first sentence and the proviso.

Editor's Note. — The 1945 amendment

§ 115-373. Determination of manner of heating school buildings.—For the purpose of determining the most economical manner and method of heating school buildings, including type of insulation, the State Board of Education in co-operation with the State Department of Public Instruction is hereby authorized to conduct experiments in the different types of heating. (1939, c. 358, s. 23½; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "School Commission."

§ 115-374. School transportation; use of school busses by State Guard or National Guard.—The control and management of all facilities for the

transportation of public school children shall be vested in the State of North Carolina under the direction and supervision of the State Board of Education, which shall have authority to promulgate rules and regulations governing the organization, maintenance, and operation of the school transportation facilities. The tax levying authorities in the various counties of the State are authorized and empowered to provide in the capital outlay budget adequate buildings and equipment for the storage and maintenance of all school busses. Provision shall be made for adequate inspection each thirty days of each vehicle used in the transportation of school children, and a record of such inspection shall be filed in the office of the superintendent of the administrative unit. It shall be the duty of the administrative officer of each administrative unit to require an adequate inspection of each bus at least once each thirty days, the report or reports of which inspection shall be filed with the administrative officers. Every principal, upon being advised of any defect by the bus driver, shall cause a report of such defect to be made to this administrative officer immediately, whose duty it shall be to cause such defect to be remedied before such bus can be further operated. The use of school busses shall be limited to the transportation of children to and from school for the regularly organized school day and to the transportation of accredited teachers in the public school system on active duty while going to and from school in the discharge of their duties for the regularly organized school day: Provided, that no routing or schedule of school busses shall be arranged or altered to accommodate any such teacher, no teacher shall displace any pupil in the seating arrangements on such bus, and no teacher shall have or exercise any official duty or responsibility while so riding on any such bus, and the bus driver shall retain all legal authority and responsibility granted or imposed on such driver; provided further, that any teacher availing himself or herself of such transportation shall be deemed to have assumed all risks incident thereto, and the State of North Carolina shall not be held in any way responsible or liable for any injury or damage resulting from the transportation of any such teacher; provided further, in cases of sudden illness or injury requiring immediate medical attention of any child or children while attending the public schools, the principal of the school may send the child or children by school bus, if no other vehicle is available, to the nearest doctor or hospital for medical treatment; provided the expense of such transportation shall be paid from county funds.

The State Board of Education is authorized and empowered, under rules and regulations to be adopted by said State Board of Education, to permit the use and operation of school busses for the transportation of school children on necessary field trips while pursuing the courses of vocational agriculture, home economics, trade and industrial vocational subjects, to and from demonstration projects carried on in connection therewith; provided that under no circumstances shall the total round trip mileage for any one trip exceed twenty-five miles nor on any such trip shall a State owned school bus be taken out of the State of North Carolina. The State Board of Education is authorized and empowered, under rules and regulations to be adopted by said Board, to permit the use and operation of school busses for transportation of school children and school employees within the boundaries of any county or health district to attend State planned group educational or health activities, specifically excluding athletic or recreational activities, which educational or health activities in the judgment of the State Board of Education are directly connected with the public school program as administered within the counties of the State, and which are conducted under the auspices or with the sanction of the State Board of Education. The costs of operating such school busses for said purpose, including the liability for workmen's compensation therewith and the employment of drivers of such busses, shall be paid for out of State funds, and the drivers of such busses shall be selected and employed as is provided for the operation of busses for the regularly organized school day under § 115-378: Provided, further, that the State Board of Education shall approve and designate any busses used for the purposes herein set forth.

When ordered to do so by the Governor, the State Board of Education is author-

ized and empowered, and it shall be its duty, to furnish a sufficient number of school busses to the North Carolina State Guard or the National Guard, and to permit the use of such school busses by the State Guard or the National Guard for the purpose of transporting members of the State Guard or National Guard to and from authorized places of encampment, or for the purpose of transporting members of the State Guard or National Guard to places where they are needed and authorized to go for the purpose of suppressing riots or insurrections or repelling invasions. Such busses, when used for the transportation of members of the State Guard or National Guard, shall be operated by members or employees of these organizations and the expenses of such operation and of repairs occasioned by such operation shall be paid from the appropriations available for the use of the State Guard or the National Guard. (1939, c. 358, s. 24; 1941, c. 214; 1941, c. 267, s. 9; 1941, c. 315; 1943, c. 197; 1943, c. 255, s. 2; 1943, c. 721, s. 8; 1947, c. 283; 1949, c. 101.)

Local Modification. — Guilford: 1947, c. 345.

Editor's Note. — The first 1941 amendment added the second paragraph, and the first 1943 amendment added the last paragraph. The second 1943 amendment struck out the former second and third paragraphs which had been changed by the second and third 1941 amendments. The

third 1943 amendment substituted "State Board of Education" for "State School Commission."

The 1947 amendment inserted the second sentence of the second paragraph, and the 1949 amendment inserted in the first paragraph the provisions relating to the transportation of teachers.

§ 115-375. Operation of school busses one day prior to opening of term.—The State Board of Education is hereby empowered, in order to properly organize the public schools of the State, to operate the school busses one day prior to the opening of the regular school term for the purpose of registration of students, organizing classes, distributing textbooks, and such other purposes as will promote the efficient organization and operation of the public schools of the State. The costs of operating the same for said purpose, including the liability for workmen's compensation therewith, shall be paid out of State funds. (1941, c. 101; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-376. Bus routes.—For all public schools to which transportation is now or may hereafter be provided, the State Board of Education in co-operation with the county superintendent of schools, the district school committee, and the district school principal shall establish the route to be followed by each school bus operated as a part of the State public school transportation system. Unless road or other conditions make it inadvisable, school busses shall be routed on State maintained highways so as to get within one mile of all children who live a greater distance than one and one-half miles from the school to which they are assigned. Bus routes shall be established with a view to the needs of the students to the end that the necessity of students waiting on the road for busses in inclement weather be eliminated. All school bus routes thus established shall be filed with the county board of education prior to the opening of schools, and all changes made therein during the school year shall be filed within 10 days with the county board of education. In case any bus route so established is unacceptable to the district school committee, such committee may appeal to the county board of education. In the event any of said routes are disapproved by the county board of education, and on notice to the State Board of Education, the staff of said board shall restudy the protested routing to the end that a prompt and satisfactory solution to the problem may be found. If the solution is not satisfactory to the county board of education, said board may file notice with the State Board of Education, and a hearing on such appeal shall be had by the State Board of Education within 30 days.

The State shall not be required to provide transportation for children living within one and one-half miles of the school in which provision for their instruction has been made.

School children shall not be transported except to the school to which said child is assigned by the county board of education or the State Board of Education under the provisions of G. S. 115-352.

Where road, geographic, or other conditions make it inadvisable to offer transportation to any school child entitled to attend the school of any particular district, the State Board of Education is authorized to approve the assignment of such child to such other school as the Board may approve. In lieu of transportation, the State Board of Education may provide for the payment monthly to the parent or guardian of such child a sum not to exceed \$10.00 per month for each school month that such child may attend school outside the district of residence. (1939, c. 358, s. 25; 1941, c. 267, s. 10½; 1943, c. 721, s. 8; 1945, c. 970, s. 15; 1947, c. 1077, ss. 4, 8; 1951, c. 1079, s. 1.)

Editor's Note. — The 1941 amendment added a provision in the first paragraph relative to waiting in inclement weather. The 1943 amendment substituted "State

Board of Education" for "State School Commission." And the 1951 amendment rewrote this section.

§ 115-377. Purchase of new equipment; heating facilities in busses. — It shall be the duty of the tax levying authorities in the various counties, and they are hereby authorized, empowered, and directed to make provision in the capital outlay budget for the purchase under State contract of new busses needed to relieve overcrowding and to provide for the transportation of children not transported during the school year one thousand nine hundred thirty-nine. It shall be the duty of the State Board of Education to determine the rated capacity of each public school bus transporting children to or from school, and it shall be the duty of the local school authorities to see that no bus is loaded more than twenty-five per cent (25%) above its rated capacity. The county boards of education shall determine when the busses are overcrowded as specified in this section, and the State shall provide for the operation of all new busses purchased by the counties. It shall be the duty of the State of North Carolina to purchase all school busses used as replacements for old publicly owned busses which were operated by the State during the school year one thousand nine hundred forty, forty-one. It shall be the duty of the State Board of Education to promulgate rules and regulations that will insure for the children the greatest possible safety, including a standard signaling device for giving the public due notice that the bus is making a stop. Before purchasing new school busses, the State Board of Education shall cause to be made a thorough study of the most modern materials and construction for insuring the safest equipment possible within the funds available. The State Board of Education, in its discretion, may effect fire insurance coverage on the school busses, or act as a self-insurer.

The State Board of Education shall provide that all school busses which may hereafter be placed in operation be equipped with adequate heating facilities. (1939, c. 358, s. 26; 1941, c. 267, ss. 8½, 10; 1943, c. 721, s. 8; 1947, c. 925.)

Cross Reference. — As to maximum speed school busses allowed to travel, see § 20-218.

Editor's Note. — The 1941 amendment inserted the second and third sentences of the first paragraph. It also substituted

"forty, forty-one" for "thirty-eight, thirty-nine" in the fifth sentence. The 1943 amendment substituted "State Board of Education" for "State School Commission." And the 1947 amendment added the second paragraph.

§ 115-378. Bus drivers.—The authority for selecting and employing the drivers of school busses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school and the county or city superintendent of

schools: Provided, that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible; and it shall be lawful to employ student drivers wherever such is deemed advisable. The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the State Board of Education for that particular type of employee. (1939, c. 358 s. 27; 1943, c. 721, s. 8.)

Local Modification. — Craven: 1945, c. 833; Currituck: 1947, c. 372.

Cross Reference.—As to standard qualifications of school bus drivers, see § 20-218.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-378.1. Monitors to preserve order in school busses.—The superintendent or principal of every public school to which students are brought by school bus or school busses may appoint a monitor for each bus.

It shall be the duty of the monitors so appointed to keep order and do other things necessary for the safe transportation of children in public school busses in North Carolina, under rules and regulations established by the county boards of education or the principal of the school where the bus is operated. (1945, c. 670.)

§ 115-379. Contract transportation.—In counties where school transportation is provided by contract with private operators, the State shall provide funds for operating costs on the standards adopted for publicly owned busses, and it shall be the duty of the tax levying authorities in the various counties to provide in the capital outlay budget the additional funds necessary to pay contracts. (1939, c. 358, s. 28.)

§ 115-380. Co-operation with Highway and Public Works Commission in maintenance of equipment.—The State Board of Education is hereby authorized to negotiate with the Highway and Public Works Commission in coordinating all facilities for the repair, maintenance, and upkeep of equipment to be used by the State Board of Education in the school transportation system. In all cases where this is done, the State Highway and Public Works Commission shall be reimbursed in the amount of the actual cost involved for labor and parts to be determined by an itemized statement filed with the State Board of Education. (1939, c. 358, s. 29; 1943, c. 721, s. 8.)

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

§ 115-381. Lunch rooms may be provided. — In such cases as may be deemed advisable by the trustees or school committee in any school, and where the same may be deemed necessary because of the distance of the said school from places where meals may be easily obtained, it shall be permissible for the said trustees and the said school committees, as a part of the functions of the said public schools, to provide cafeterias and places where meals may be sold, and operate or cause the same to be operated for the convenience of teachers, school officers, and pupils of the said schools. There shall be no personal liability upon the said trustees and school committees, or members thereof, arising out of the operation of the said eating places, and it is understood and declared that the same are carried on and conducted in connection with the public schools, and because of the necessities arising out of the consolidation of the said schools and the inconvenience and interruption of the school day caused by seeking meals elsewhere: Provided, that no part of the appropriation made by the State for the public schools shall be expended for the operation of said cafeterias or eating places, nor shall the provisions of § 115-370 apply to the employees of the cafeterias or eating places, except such persons as are regularly employed otherwise in the schools.

All lunch rooms and cafeterias operated under the provisions of this section shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation shall be used for the purpose of reducing the cost of meals served therein, and for no other purpose. (1939, c. 358, s. 30; 1945, c. 970, s. 9.)

Cross Reference.—As to revolving fund for counties receiving federal aid for school lunches, see § 115-25.1.

Editor's Note. — The 1945 amendment added the second paragraph.

§ 115-382. **Miscellaneous funds.**—It shall be the duty of the county superintendent of public instruction to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes are correctly accounted for to the school fund each year, and to examine the records of the several courts of the county, including courts of justices of the peace, at least once every three months to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund, are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be his duty to make prompt report thereof to the State Board of Education and also to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of poll taxes, dog taxes, fines, forfeitures, and penalties to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court: Provided, however, that this section shall not be construed as making unlawful the use of such portions of said funds for other purposes as may be provided by the provisions of this subchapter. The clear proceeds of poll taxes, dog taxes, fines, forfeitures and penalties shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including justices of the peace, who shall willfully fail or refuse to account for all poll taxes, dog taxes, fines, forfeitures or penalties coming into the hands of such officer, shall, upon conviction thereof, be guilty of a felony and imprisoned in the State's prison in the discretion of the court, or fined in the discretion of the court, or both. (1939, c. 358, s. 31; 1943, c. 721, s. 8.)

Cross Reference. — As to fines, forfeitures and penalties belonging to the school fund generally, see § 115-177 et seq.

Editor's Note. — The 1943 amendment substituted "State Board of Education" for "State School Commission."

SUBCHAPTER XXIII. NORTH CAROLINA STATE THRIFT SOCIETY.

ARTICLE 51.

North Carolina State Thrift Society.

§ 115-383. **North Carolina State Thrift Society incorporated.**—In order the better to provide for the education of the school children of the State in the principles and practice of thrift and saving and in order to aid them in making better provision for their future advanced education, there is hereby created under the patronage and control of the State a nonstock corporation to be known as the North Carolina State Thrift Society. (1933, c. 385, s. 1.)

Editor's Note.—Session Laws 1943, c. 543, directed that former §§ 55-14 through 55-25, inclusive, be transferred to follow immediately after § 115-382 and that they be appropriately renumbered.

§ 115-384. **Charter perpetual.**—The charter of the Society shall be perpetual. (1933, c. 385, s. 2.)

§ 115-385. **Membership and directors.**—The membership of the Society

shall be identical with the membership of the governing board, which shall consist of sixteen directors. The State Treasurer, the Superintendent of Public Instruction, the president of the North Carolina Bankers Association and the president of the University of North Carolina shall throughout their terms of office be ex officio members of the board. The remaining twelve members of the board shall be appointed by the Governor for successive terms of four years each, and shall be equally divided between the business and financial and the educational interests of the State, six members to each of the named groups: Provided that at least four of those representing business must be experienced bankers. (1933, c. 385, s. 3.)

§ 115-386. **Vacancies.**—In the event of a vacancy occurring before the expiration of the terms of office of any director, the board by a majority vote of its full membership, including ex officio members, shall have power to elect persons to fill out the unexpired terms. (1933, c. 385, s. 4.)

§ 115-387. **Officers of Society.**—The officers of the Society shall be elected by the board, and shall include a president, vice-president, secretary, treasurer and auditor. The treasurer of the Society shall be responsible for the funds of the Society, and shall furnish good and sufficient surety in such amount as may be fixed from time to time by the board of directors. (1933, c. 385, s. 5; 1935, c. 489, s. 1.)

Editor's Note.—Prior to the 1935 amendment the State Treasurer was ex officio treasurer and depository of the fund of the Society. The second sentence was added by the amendment.

§ 115-388. **Powers of purchase and sale.**—The Society shall have power and authority to purchase, lease and otherwise acquire such real and personal property as may be deemed useful to the prosecution of the objects for which it is created. It may sell and dispose of the same and may hold or may sell and convey such property also as may be taken in whole or partial satisfaction of any debt due to it. It may also receive gifts of money and property to be applied to its corporate purposes. (1933, c. 385, s. 6.)

§ 115-389. **Deposits of school children.**—The Society may receive deposits of the funds of children and others attending any of the public schools or colleges of North Carolina, as provided in § 115-394, and subject to repayment on terms established by the board, provided that no individual account may exceed \$1,000. (1933, c. 385, s. 7.)

§ 115-390. **Depositories.**—The funds in the treasurer's hands may be deposited by him, to his credit, with banks which are members of the Federal Deposit Insurance Corporation. In no case may the amount in any one bank exceed the amount covered by insurance. The interest accruing and paid on such deposits shall be added to the funds of the Society. (1933, c. 385, s. 8; 1935, c. 489, s. 2.)

Editor's Note. — The 1935 amendment changed this section to conform to the changes made in § 115-387.

§ 115-391. **Exemption from taxation.** — Neither deposits in the Society nor its property, investments and assets shall at any time be subject to taxation by the State of North Carolina or any of its subdivisions, except that gift, inheritance or estate taxes may be levied on the transfer of private deposits in the Society. (1933, c. 385, s. 9.)

§ 115-392. **Investments.**—The funds of the Society may, at the discretion of the board, be invested in obligations of the United States government, or

of the State of North Carolina, or deposited as previously provided in § 115-390. (1933, c. 385, s. 11; 1935, c. 489, s. 4.)

Editor's Note.—Prior to the 1935 amendment this section provided that the funds where not required for student loans could at the discretion of the board be in-vested in obligations of the United States government or of the State of North Carolina.

§ 115-393. **No expense to State.**—Provided, that no liability of any kind shall rest on the State of North Carolina by reason of this article. (1933, c. 385, s. 12; 1935, c. 489, s. 5.)

Editor's Note.—Prior to the 1935 amendment this section also provided that "no expense of any nature" should rest on the State.

§ 115-394. **Thrift instruction provided by Superintendent of Public Instruction in schools.**—Within 150 days from May 13, 1933, the State Superintendent of Public Instruction shall provide in the public schools of the State for instruction in thrift and the principles, practice and advantage of saving.

In connection with the instruction so provided arrangements shall be made at each school for the receiving of students' savings deposits into the North Carolina State Thrift Society, subject to its rules and on the terms provided therein.

The administration of the system in each school shall be in charge of one or more of the teachers in said school to be designated by the principal.

The savings deposits shall be transmitted to the treasurer of the said Society from time to time, in accordance with rules to be established by the governing board of the North Carolina State Thrift Society, and shall be held for the purposes declared in the charter of the said Society. (1933, c. 481, ss. 1-4; 1935, c. 489, s. 6.)

Editor's Note.—Prior to the 1935 amendment this section provided, in the last paragraph, that deposits should be transmitted to the State Treasurer instead of the treasurer of the Society.

Chapter 116.

Educational Institutions of the State.

Article 1.

The University of North Carolina.

Part 1. General Provisions.

- Sec.
116-1. Constitutional provisions.
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ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. **Constitutional provisions.**—The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof, in anywise granted to or conferred upon the trustees of such University; and the General Assembly may make provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of such University. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University, and the General Assembly shall establish and maintain, in connection with the University, a department of agriculture, of mechanics, of mining, and of normal instruction. (Const., art. 9, ss. 6, 7, 14; Rev., s. 4259; C. S., s. 5781.)

Construction of the Word "Dividend."—The word "dividend" as used in this section is synonymous with "distributive shares," and is used as a convertible term. Trustees v. North Carolina R. Co., 76 N. C. 103 (1877).

§ 116-2. **Consolidated University of North Carolina.**—The University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women are hereby consolidated and merged into "The University of North Carolina." (1931, c. 202, s. 1.)

§ 116-3. **Incorporation and corporate powers.**—The trustees of the University shall be a body politic and corporate, to be known and distinguished by the name of the "University of North Carolina," and by that name shall have perpetual succession and a common seal; and by that name shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the University, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the University, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the University, or according to the terms of donation.

The corporation, by its corporate name, shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the deviser does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

In addition to these powers, the board of trustees shall succeed to all the rights, privileges, duties and obligations by law, or otherwise, enjoyed by or imposed upon the University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women, prior to March 27, 1931. (1789, c. 305, ss. 1, 2, P. R.; R. S., vol. 2,

pp. 424, 425; 1874-5, c. 236, s. 2; Code, ss. 2610, 2611, 2630; Rev., ss. 4260, 4261; C. S., s. 5782; 1931, c. 202, s. 4.)

Capacity to Take Devise.—See *Brewer v. University*, 110 N. C. 26, 14 S. E. 644 (1892).

§ 116-3.1. **School of dentistry.**—In order to carry forward the medical care program for all the people of North Carolina, the board of trustees of the University of North Carolina is hereby authorized, empowered and directed to establish and maintain, in conjunction with the medical school of the University of North Carolina, a school for the teaching of dentistry. (1949, c. 503.)

§ 116-4. **Trustees; number, election and term.**—There shall be one hundred trustees of the University of North Carolina, at least ten of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. The General Assembly in one thousand nine hundred and thirty-one shall elect such trustees, and their terms of office shall commence on July 1, 1932.

Twenty-five of the trustees shall be elected for terms expiring April 1, 1933, twenty-five for terms expiring April 1, 1935, twenty-five for terms expiring April 1, 1937, and twenty-five for terms expiring April 1, 1939. As and when their terms respectively expire, their successors shall be elected by the General Assembly by joint ballot for terms of eight years. The Superintendent of Public Instruction is ex officio a trustee of the University.

The members of the board of trustees of the University or other State institutions of North Carolina shall be deemed commissioners of public charities within the meaning of the proviso to section seven of Art. XIV of the Constitution of North Carolina. (Const., art. 9, s. 6; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; Code, ss. 2620, 2625; Rev., s. 4268; 1909, c. 432; 1917, c. 47; C. S., s. 5789; 1931, c. 202, ss. 4, 5; 1937, c. 139.)

This section is constitutional. Trustees
v. McIver, 72 N. C. 76 (1875).

§ 116-5. **Living Governors made honorary members of board of trustees.**—Each of the former Governors of North Carolina now living is hereby made an honorary member of the board of trustees of the University of North Carolina for life, with the power to vote on all matters coming before said board of trustees for consideration. The present Governor of North Carolina, and each succeeding Governor, shall, at the expiration of the term of office of each, automatically become an honorary member of the board of trustees of the University of North Carolina for life, with the power to vote on all matters coming before the said board of trustees for consideration. (1941, c. 136.)

§ 116-6. **Trustees may remove members of board.**—The board of trustees shall have power to vacate the appointment and remove a trustee for improper conduct, stating the cause of such removal on the journal; but this shall not be done except at a regular meeting of the board, and there shall be present at the doing thereof at least twenty of the members of the board. (R. S., vol. 2, p. 432; Code, s. 2619; Rev., s. 4270; C. S., s. 5790.)

§ 116-7. **Filling vacancies in board.**—Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the General Assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section, but shall not apply to members serving in any branch of the United States armed forces or in the military forces of any of the allies of the United States. (1804, c. 647, P. R.; 1805, c. 678, s. 2, P. R.;

1873-4, c. 64, s. 3; Code, s. 2622; 1891, c. 98; Rev., ss. 4271, 4272; 1907, c. 828; C. S., s. 5791; 1943, c. 175.)

Editor's Note. — The 1943 amendment added the exception clause to the last sentence.

§ 116-8. Meetings of trustees, regular and special; quorum.—There shall be two regular meetings of the board of trustees each calendar year. One of these regular meetings shall be in the city of Raleigh, which meeting shall be held during the session of the General Assembly during the years that body convenes. The other regular meeting shall be held at such time and place as the Governor may appoint. At any of the regular meetings of the board any number of trustees, not less than ten, shall constitute a quorum and be competent to exercise full power and authority to do the business of the corporation; and the board or the Governor shall have power to appoint special meetings of the trustees at such time and place as, in their opinion, the interest of the corporation may require; but no special meeting shall have power to revoke or alter any order, resolution, or vote of any regular meeting; and the board of trustees at any regular meeting may, by resolution, vote, or ordinance, from time to time, as to it shall seem meet, limit, control, and restrain the business to be transacted, and the power to be possessed and exercised by special meetings of the board, called according to law, and the powers of such special meetings shall be limited, controlled and restrained accordingly. And every order, vote, resolution, or other act done, made, or adopted by any special meeting, contrary to any order, resolution, vote, or ordinance of the board at any regular meeting shall be absolutely, to all intents and purposes, null and void. (R. S., vol. 2, p. 433; 1873-4, c. 64, s. 2; Code, ss. 2616, 2618, 2621; Rev., s. 4269; C. S., s. 5792.)

§ 116-9. Governor to preside at trustees' meetings or appoint presiding officer.—The Governor shall preside at all the meetings of the board at which he may be present; and if, by indisposition or other cause, the Governor shall be absent from any meeting of the board, he may appoint, in writing, some other person, being a trustee, to act in his stead for the time being, which appointee shall preside accordingly; and if at any time the Governor shall be absent from the meeting of the board and shall not have appointed some trustee to act in his stead it shall be lawful for the board to appoint some one of their number to preside for the time being. (1805, c. 678, P. R.; R. S., vol. 2, p. 432; Code, s. 2615; Rev., s. 4263; C. S., s. 5788.)

§ 116-10. Rules and regulations.—The trustees shall have power to make such rules and regulations for the management of the University as they may deem necessary and expedient, not inconsistent with the constitution and laws of the State. (1873-4, c. 64, s. 4; Code, s. 2623; Rev., s. 4273; C. S., s. 5794.)

§ 116-11. Executive committee.—The trustees shall have power to appoint from their own number an executive committee which shall be clothed with such powers as the trustees may confer. (1873-4, c. 64, s. 5; Code, s. 2624; Rev., s. 4267; C. S., s. 5795.)

§ 116-12. President and faculty.—The trustees shall have the power of appointing a president of the University of North Carolina and such professors, tutors, and other officers as to them shall appear necessary and proper, whom they may remove for misbehavior, inability, or neglect of duty. (1789, c. 305, s. 7, P. R.; R. S., vol. 2, p. 427; Code, s. 2613; Rev., s. 4264; C. S., s. 5796.)

§ 116-13. Treasurer; duties and bond.—The trustees shall elect and commission some person to be treasurer for the corporation during the term of two years and until his successor shall be elected and qualified; which treasurer shall enter into bond, with sufficient sureties, payable to the State of North

Carolina, in the sum of not less than ten thousand dollars, conditioned for the faithful discharge of his office and the trust reposed in him, and that all moneys and chattels belonging to the corporation that shall be in his hands at the expiration of his office shall then be immediately paid and delivered into the hands of the succeeding treasurer. Every treasurer shall receive all moneys, donations, gifts, bequests, and charities whatsoever that may belong or accrue to the corporation during his office, and at the expiration thereof shall account with the trustees for the same, and the same pay and deliver over to the succeeding treasurer; and on his neglect or refusal so to pay and deliver the same proceedings may be had against him as is or may be provided for the recovery of moneys from sheriffs or other persons chargeable with public moneys. (1789, c. 305, s. 4, P. R.; R. S., vol. 2, p. 426; Code, s. 2612; Rev., s. 4265; C. S., s. 5797.)

§ 116-14. Vacancies in offices of secretary and treasurer.—In case the office of secretary or treasurer of the corporation shall be vacant from any cause whatever in the recess of the board of trustees, the president shall appoint a suitable person to fill the same until the annual meeting of the board of trustees, at which time the board shall elect a proper person to fill such vacancy. (R. S., vol. 2, p. 433; Code, s. 2617; Rev., s. 4266; C. S., s. 5798.)

§ 116-15. Extension work.—It shall be the duty of the faculty of the University to extend its influence and usefulness as far as possible to the persons of the State who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S., s. 5837.)

§ 116-16. Awarding of degrees, etc., by consolidated University.—The faculty of the University, that is to say, the president and professors, shall have the power of conferring all such degrees or marks of literary distinction as are usually conferred by colleges or universities. All degrees or marks of literary distinction conferred by the University of North Carolina or any of its component colleges as herein specified, shall be conferred by the faculty of the University of North Carolina or the faculty of any one of its component colleges by and with the consent of the board of trustees, but degrees or marks of literary distinction conferred by the faculty of any one of the said colleges shall designate the college through or by which said degree or mark of literary distinction is conferred. (C. S., s. 5796; 1931, c. 202, s. 11.)

§ 116-17. Application of receipts.—All receipts shall be applied to the maintenance and promotion of the particular unit of the University receiving same and to the objects specified in any laws making appropriations for its support, or in accordance with the expressed wishes of any donor, as far as practicable. (1907, c. 406, s. 17; C. S., s. 5815.)

§ 116-18. Gifts and endowments belong to institution to which made; administration of such funds.—All gifts and endowments, whether moneys, goods or chattels, or real estate, heretofore or hereafter given or bestowed upon or conveyed to any one of the institutions, as existing before March 27, 1931, shall continue thereafter to be used, enjoyed, and administered by the particular unit to which they were given or conveyed; but if there were trusts, they shall be administered by said unit in accordance with the provisions of the trust deed creating them, for the benefit of the particular institution to which such trust deed was executed. The administration of all these funds, endowments, gifts, and contributions shall, however, be under the control of the board of trustees of the University of North Carolina. (1931, c. 202, s. 12.)

§ 116-19. Tax exemption.—The lands and other property belonging to the corporation shall be exempt from all kinds of public taxation. (Const., art. 5,

s. 5; 1789, c. 306, s. 3, P. R.; R. S., vol. 2, p. 428; Code, s. 2614; Rev., s. 4262; C. S., s. 5783.)

§ 116-20. Escheats to University.—All real estate which has heretofore accrued to the State, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation. Title to any such real property which has escheated to the University of North Carolina, shall be conveyed by deed in the manner now provided by § 143-146 to and including § 143-150 of the General Statutes of North Carolina: Provided, that in any action in the superior court of North Carolina wherein the University of North Carolina is a party, and wherein said court enters a judgment of escheat in behalf of the University of North Carolina for any real property, then, upon petition of the University of North Carolina in said action, said court shall have the authority to appoint the escheat officer of the University of North Carolina as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale, but only after said sale shall have first been confirmed and approved by the comptroller of the University of North Carolina. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the escheat fund of the University of North Carolina. (Const., art. 9, s. 7; 1789, c. 306, s. 2, P. R.; R. C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C. S., s. 5784; 1947, c. 494.)

Editor's Note. — The 1947 amendment added all of this section beginning with the second sentence.

For a brief discussion of the 1947 amendment, and other provisions relating to escheats, see 25 N. C. Law Rev. 421.

Right Conferred by Constitution and Extended by Statute. — The right of succession by escheat to all property, when there is no wife or husband or parties to inherit or take under the statutes of descent and distribution, has been conferred upon the University of North Carolina by the State Constitution, Art. IX, § 7, and extended by this and the following five sections. Board of Education v. Johnston, 224 N. C. 86, 29 S. E. (2d) 126 (1944).

§ 116-21. Evidence making prima facie case.—In all cases where land situated in this State is claimed by the University of North Carolina by right of escheat, it shall be sufficient to prove, in order to make out a prima facie case of escheat, that the land claimed was granted by the State of North Carolina; that the grantee, or any subsequent owner thereof, died without disposing of said land either by conveyance or will, registered or probated prior to the institution of the action, and that for fifty (50) years subsequent to the death of the last known owner, no person has appeared to claim the land either as devisee, grantee, or heir. (Ex. Sess. 1920, c. 43; C. S., s. 5784(a).)

Cross Reference. — See note under § 116-20.

Section Applicable Only to Proof.—The provisions of this section apply only to

Vested Right Not Impaired by Repeal of Section.—The legislature cannot deprive the trustees of the University of escheated property which by virtue of this section has vested in them, by a subsequent act repealing this section. Trustees v. Foy, 5 N. C. 58 (1805).

Land held by incorporated town held to escheat upon repeal of town charter under the facts of the case. University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511 (1932).

Applied in In re Will of Neal, 182 N. C. 405, 109 S. E. 70 (1921).

Cited in Smith v. Dicks, 17 N. C. 355, 148 S. E. 464 (1929).

proof and not to pleading. University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511 (1932).

§ 116-22. Unclaimed personalty on settlements of decedents' estates to University.—All sums of money or other estate of whatever kind which shall

remain in the hands of any executor, administrator, or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator, or collector to the University of North Carolina; and that corporation is authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto. (Const., art. 9, s. 7; 1784, c. 205, s. 2, P. R.; 1809, c. 763, s. 1, P. R.; R. S., c. 46, s. 20; 1868-9, c. 113, s. 76; Code, ss. 1504, 2627; Rev., s. 4283; C. S., s. 5785; 1947, c. 614, s. 2.)

Cross Reference. — See note under § 116-20.

Editor's Note. — The 1947 amendment struck out the words "and if no such claim shall be preferred within ten years after such money or other estate be received by

such corporation, then the same shall be held by it absolutely," which formerly appeared at the end of this section.

Applied in *Warner v. Western North Carolina R. Co.*, 94 N. C. 250 (1886).

§ 116-23. Other unclaimed personalty to University.—Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (Code, ss. 2628, 2629; Rev., s. 4284; C. S., s. 5786; 1947, c. 614, s. 2.)

Local Modification. — Forsyth: 1945, c. 1049, s. 4.

Cross Reference. — See note under § 116-20.

Editor's Note. — The 1947 amendment struck out the words "and if no such claim shall be preferred within ten years after such property or dividend shall be received by it, then the same shall be held by it absolutely" formerly appearing at the end of this section.

Escheat Officer Not Liable.—Funds representing amounts apportioned to claimants of an insolvent bank who failed to

prove their claims, which are turned over to the Secretary of State as escheat officer, are not assets of the liquidated bank, but are to be held by the University, subject solely to the rights of those who failed to prove their claims, and a depositor who proved his claim and received dividends thereon as a common claim may not hold the escheat officer liable for the balance unpaid on his claim upon his contention that the claim should have been paid in full as a preferred claim. *Windley v. Lupton*, 212 N. C. 167, 193 S. E. 213 (1937).

§ 116-23.1. Unclaimed funds held or owing by life insurance companies.—(1) **Definitions.**—The term "unclaimed funds" as used in this section shall mean and include all monies held and owing by any life insurance company doing business in this State which shall have remained unclaimed and unpaid for seven years or more after such monies became due and payable under any life or endowment insurance policy. A life insurance policy not matured by the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this section when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Monies shall be deemed to be "due and payable" within the meaning of this section although the policy shall not have been surrendered nor proofs of death submitted as required and although the claim as to the payee is barred by a statute of limitations.

(1½) **Scope.**—This section shall apply to all unclaimed funds, as herein defined, held and owing by any life insurance company doing business in this State where the last known address, according to the records of such company, of the person entitled to such funds is within this State, provided that if a person other than the insured be entitled to such funds and no address of such person be

known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this section that the last known address of the person entitled to such funds is the same as the last known address of the insured according to the records of such company.

(2) Reports.—Every such life insurance company shall on or before the first day of May of each year make a report in writing to the Commissioner of Insurance of all unclaimed funds, as hereinbefore defined, held or owing by it on the thirty-first day of December next preceding. Such report shall be signed and sworn to by an officer of such company and shall set forth (1) in alphabetical order the full name of the insured, his last known address according to the company's records, and the policy number; (2) the amount appearing from the company's records to be due on such policy; (3) the date such unclaimed funds became payable; (4) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and (5) such other identifying information as the Commissioner of Insurance may require.

(3) Notice; Publication.—On or before the first day of September following the making of such reports under this section, the Commissioner of Insurance shall cause to be published notices entitled: "Notice of Certain Unclaimed Funds Held or Owing by Life Insurance Companies." Each such notice shall be published once a week for two successive weeks in a newspaper published in the county of this State in which is located such last known address of each such insured, or other person who, according to the company's records may have an interest in such unclaimed fund, or if no newspapers are published in such county, then by posting such notice at the courthouse door of said county.

The notice shall set forth in alphabetical order the names contained in such reports of each insured whose last known address is within the county of publication together with (1) the amount reported due and the date it became payable, (2) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and (3) the name and address of the company. The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than December 1st such unclaimed funds still remaining will be paid to the University of North Carolina which shall thereafter be liable for the payment thereof.

It shall not be obligatory upon the Commissioner of Insurance to publish any item of less than fifty dollars in such notice, unless the Commissioner of Insurance deems such publication to be in the public interest. The expenses of publication shall be charged against the University of North Carolina.

(4) Payment to University of North Carolina.—All unclaimed funds contained in the report required to be filed under this section, excepting those which have ceased to be unclaimed funds since the date of such report, shall be paid over to the University of North Carolina on or before the following December 1st.

The Commissioner of Insurance shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this section shall be extended for a like period.

(5) Custody of Unclaimed Funds; Insurers Exonerated.—Upon the payment of such unclaimed funds to the University of North Carolina, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which

thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

(6) Reimbursement for Claims Paid by Insurers.—Any life insurance company which has paid to the University of North Carolina monies deemed unclaimed funds pursuant to the provisions of this section may make payment to any person appearing to such company to be entitled thereto, and upon proof of such payment the State of North Carolina shall forthwith reimburse such company to the extent of the full amount, without interest, paid the University of North Carolina for the account of such claimant.

(7) Determination and Review of Claims.—Any person entitled to unclaimed funds paid to the University of North Carolina may file a claim at any time with the Commissioner of Insurance. The Commissioner of Insurance shall possess full and complete authority to accept or reject any such claim. If he rejects such claim or fails to act thereon within ninety days after receipt of such claim, the claimant may make application to the Superior Court of Wake County, upon not less than thirty days' notice to the Commissioner of Insurance, for an order to show cause why he should not accept and order paid such claim.

(8) Payment of Allowed Claims.—Any claim which is accepted by the Commissioner of Insurance or ordered to be paid by a court of competent jurisdiction shall be paid by the University of North Carolina.

(9) Records Required.—The University of North Carolina shall keep a public record of each payment of unclaimed funds received from any life insurance company. Such record shall show in alphabetical order the name and last known address of each insured, and of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and with respect to each policy, its number, the name of the company, and the amount due.

(10) Payments to Other States; Pending Litigation.—This section shall not apply to or affect any unclaimed funds (a) which have been paid to another state or jurisdiction prior to March 31, 1949, or (b) which are at such date involved in litigation with reference to the custody, appropriation or escheat of such funds. (1949, c. 682.)

§ 116-24. Certain unclaimed bank deposits to University.—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Upon receipt of such funds, the University of North Carolina shall cause to be posted and keep posted for thirty days at the courthouse door of the county in which such bank is located, a notice giving the names of the persons in whose name or names such deposits were made in said bank, the amount thereof, and the last known address of such person, and the bank paying over said funds to the University of North Carolina shall furnish such information to be used in giving said notice. If any person at any time thereafter shall appear and show that he is the identical person to whom such funds are due, the University of North Carolina shall pay the same in full to such person, but without any liability for interest or profits thereon. Debits of service charges and debits of intangible taxes made by banks shall not be considered debits within the meaning of this section. A bank shall be deemed to be unable to locate a depositor or owner when the present address of the depositor or owner is unknown to the bank, and United States mail addressed to the depositor or owner at the last known address, with a return address of the sending bank

on the envelope, is returned undelivered to the bank mailing the same. (1937, c. 400; 1939, c. 29; 1947, c. 614, s. 3; 1949, c. 1069.)

Cross References.—See note to § 116-20. As to escheat of dividends on unclaimed deposits in insolvent banks, see § 53-20, subsection (12).

Editor's Note.—See 15 N. C. Law Rev. 350.

Prior to the 1939 amendment this section applied only to deposits of five dollars and less.

The 1947 amendment added the third

and fourth sentences. It also struck out the following phrase formerly appearing at the end of the first sentence of the section: "and if no such claim shall be preferred within ten years after such deposit shall be received by it, then the same shall be held by it absolutely."

The 1949 amendment added the last two sentences. For comment on the amendment, see 27 N. C. Law Rev. 427.

§ 116-25. Other escheats.—Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation engaged in construction work in North Carolina for services rendered in such construction work within the State are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the University of North Carolina immediately upon the expiration of one year from the time the same became due.

Rebates and returns of overcharges due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the Utilities Commission, shall be paid to the University of North Carolina.

All monies in the hands of clerks of the superior court, the State Treasurer, or any other officer or agency of the State or county, or any other depository whatsoever, as proceeds of the liquidation of State banks by receivers appointed in the superior court prior to the Liquidation Act of one thousand nine hundred twenty-seven, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All monies in the hands of the Treasurer of the State, represented by State warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the University of North Carolina.

All monies, claims, or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

Any funds derived from the liquidation of any national bank organized and operated in this State, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the Comptroller of the Currency as provided by Title 12 of United States Code Annotated, sections 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the Comptroller of the Currency and deposited with the Treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stockholder of this State, which for a period of ten years after becoming due such depositor or stockholder or available for distribution to any stockholder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be

paid over to the University of North Carolina by the Comptroller of the Currency, or by such agent as may have the funds in charge, to be held in protective custody by the University of North Carolina until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the University of North Carolina, the Comptroller of the Currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the University of North Carolina shall cause to be posted, and keep posted for thirty days, at the courthouse door of the county in which such insolvent national bank did business, a notice giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided, the Comptroller of the Currency or liquidating agent of such insolvent national bank shall furnish such information to the University of North Carolina when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund is due, the University of North Carolina shall pay such part in full to such person, but without any liability for interest or profits thereon. (1939, c. 22; 1947, c. 614, s. 1; 1947, c. 621, s. 2.)

Editor's Note. — The 1947 amendment struck out the word "now" formerly appearing after the word "monies" in the first line of the third and fourth paragraphs, and struck out the former last

clause of the fifth paragraph dealing with the preferring of claims within ten years. The amendment also added the last two paragraphs to the section.

§ 116-26. **Application of receipts.**—All receipts heretofore had or hereafter to be had from escheated property or derelict property, and all interest and earnings thereon, shall be set apart by the trustees of the University so that the interest and earnings from said fund shall be used for maintenance and/or for scholarships and loan funds to worthy and needy students, residents of this State, attending the University of North Carolina, under such rules and regulations as shall be adopted by the board of trustees of the University with regard thereto. (1874-5, c. 236, s. 2; Code, s. 2630; Rev., s. 4285; C. S., s. 5787; 1947, c. 614, s. 4.)

Editor's Note. — The 1947 amendment rewrote this section.

Part 2. North Carolina State College of Agriculture and Engineering of the University of North Carolina.

§ 116-27. **Operation of State College at Raleigh.**—The North Carolina State College of Agriculture and Engineering shall from and after March 27, 1931 be conducted and operated as part of the University of North Carolina. It shall be located at Raleigh, North Carolina, and shall be known as the North Carolina State College of Agriculture and Engineering of the University of North Carolina. (1931, c. 202, s. 2.)

§ 116-28. **Object of the College.**—The object of this College shall be to teach the branches of learning relating to agricultural and mechanical arts and such other scientific and classical studies as the board of trustees may elect to have taught, and to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life. (1907, c. 406, s. 3; C. S., s. 5807.)

§ 116-29. **Share in appropriations by Congress.** — The appropriations made or which may hereafter be made by the Congress for the benefit of colleges of agricultural and mechanical arts shall be divided between the white and colored institutions in this State in the ratio of the white population to the colored, as ascertained by the preceding national census. (1907, c. 406, s. 1; C. S., s. 5808.)

§ 116-30. **Board to accept gifts and congressional donations.**—The board of trustees shall use, as in its judgment may be proper, for the purposes of such College and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The board of trustees shall have power to accept and receive on the part of the State, property, personal, real or mixed, and any donations from the United States Congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the Congress in relation thereto. (1907, c. 406, s. 6; C. S., s. 5816.)

§ 116-31. **Land scrip fund.**—The board of trustees shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars, issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the State Treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of such College in accordance with the act of the Congress approved July second, one thousand eight hundred and sixty-two, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts." (1907, c. 406, s. 8; C. S., s. 5817.)

§ 116-32. **Agricultural experiment station.**—The agricultural experiment and control station shall be connected with the College and controlled by the board of trustees. (1907, c. 406, s. 12; C. S., s. 5825.)

Cross Reference.—As to agricultural experiment station and test farms under auspices of Board of Agriculture, see § 106-15.

§ 116-33. **Land for experimental purposes.**—The State Highway and Public Works Commission and the board of trustees of the University of North Carolina are hereby authorized to enter into an agreement for the benefit and use of the North Carolina State College of Agriculture and Engineering of the University of North Carolina whereby a certain portion of the land located near Method, North Carolina, and in the possession of the State Highway and Public Works Commission may be conveyed to the University for a term of years or in fee simple, to be used by said College for research, experimental or demonstration purposes, and whenever an agreement is entered into, the Governor and Secretary of State are authorized to execute a lease or deed conveying to the University the number of acres of land agreed upon. (1925, c. 198, s. 1.)

§ 116-34. **Joint employment by College and State.**—Whenever it shall be to the advantage of the North Carolina State College of Agriculture and Engineering and any department of the State government to employ jointly any person, the board of trustees and the governing authority of the department, on the approval of the Governor, are hereby authorized to make such employment and to prorate the amount of the salary and other expenses that each shall be required to pay. (1925, c. 198, s. 2.)

§ 116-35. **Co-ordinating committee of College and Department of Agriculture created.**—A co-ordinating committee is hereby created consisting of thirteen members as follows: The president of the board of trustees of the University of North Carolina, who shall be ex officio chairman of said committee, the president of the University, the dean of administration of State College of Agriculture and Engineering, and the dean of agriculture, the Commissioner of Agriculture, the assistant commissioner of agriculture, and the State Chemist or any other officer in the Department of Agriculture which the Com-

missioner of Agriculture may designate, three members of the board of trustees of the University of North Carolina who have a practical knowledge of agriculture, to be appointed by the president of the said board, and three members of the State Board of Agriculture, to be appointed by the Commissioner of Agriculture, the members so appointed to serve for a term of two years or until their successors are duly appointed. (1939, c. 255, s. 1.)

§ 116-36. **Duties of co-ordinating committee.**—It shall be the duty of the co-ordinating committee herein created to deal with and handle any existing matters of duplication, overlapping or disagreement, and such controversial matters as may arise in the future in the agricultural agencies of the State College of Agriculture and Engineering and the Department of Agriculture. Whenever there is an overlapping or disagreement in consequence of closely allied functions and duties of the said agencies, it shall be the duty of the co-ordination committee to allocate, after due consideration, such duties and functions as may be in disagreement or overlapping, and that are not already allocated by law, to the proper agency as it may deem wise, and to require such co-operation between the employees in the agencies as it may deem necessary. The co-ordinating committee may investigate, on complaint, or on its own initiative, any overlapping, duplication or disagreement and the decision of the said committee shall be binding on all parties. (1939, c. 255, s. 2.)

§ 116-37. **Findings of committee to be binding on Commissioner of Agriculture and president of University.**—The findings and recommendations of the co-ordinating committee shall be binding on the Commissioner of Agriculture and the president of the University of North Carolina and it shall be their duty to see that the findings and recommendations of the committee shall be put into effect in their respective departments. (1939, c. 255, s. 3.)

Part 3. Woman's College of the University of North Carolina.

§ 116-38. **Operation of College for Women at Greensboro.**—The North Carolina College for Women shall from and after March 27, 1931, be conducted and operated as a part of the University of North Carolina. It shall be located at Greensboro, North Carolina, and shall be known as the Woman's College of the University of North Carolina. (1931, c. 202, s. 3; 1943, c. 543.)

Editor's Note. — The 1943 amendment word "Women's" in the next to the last substituted the word "Woman's" for the line.

§ 116-39. **Objects of institution.**—The objects of the Woman's College of the University of North Carolina shall be to teach young white women all branches of knowledge recognized as essential to a liberal education, such as will familiarize them with the world's best thought and achievement and prepare them for intelligent and useful citizenship; to make special provision for training in the science and art of teaching, school management, and school supervision; to provide women with such training in the arts, sciences, and industries as may be conducive to their self-support and community usefulness; to render to the people of the State such aid and encouragement as will tend to the dissemination of knowledge, the fostering of loyalty and patriotism, and the promotion of the general welfare. (1919, c. 199, s. 2; C. S., s. 5835.)

§ 116-40. **Admission of students.**—The board of trustees shall make rules and regulations for the admission of students, but shall not discriminate against any county in the number of students allowed it, in case all applicants cannot be accommodated. Each county shall have representation in proportion to its white school population, if it desires it; and, should any county fail to avail itself of its proportional number, the board of trustees may recognize applicants from counties which already have their proportionate representation. (1891, c. 139, s. 4; Rev., s. 4254; C. S., s. 5836.)

§ 116-41. **Dining halls.**—For the benefit of those who may desire to avail themselves of it dining halls shall be established at which meals shall be furnished at actual cost. (1891, c. 139, s. 12; 1905, c. 502; Rev., s. 4257; 1919, c. 199, s. 4; C. S., s. 5838.)

Part 4. Miscellaneous Provisions.

§ 116-42. **License for operating billiard tables, etc., to be approved by president of University.**—No person, firm or corporation shall apply for or receive from the governing body, or the representative of such governing body, of any county or incorporated city or town, any license or authorization to set up, maintain or keep in Chapel Hill, or within five miles thereof, any public billiard table or other public table of any kind, by whatever name called, at which games of chance or skill may be played, without first obtaining written permission therefor from the president of the University of North Carolina. Nor shall any person, firm or corporation apply for or receive a license from any such governing body, or the representative thereof, to keep, maintain or operate within the town of Chapel Hill or within five miles of the boundaries thereof, any house, place or establishment wherein ten pin alleys, bowling alleys, or other games of chance or skill shall be operated or conducted without first obtaining written permission therefor from the president of the University of North Carolina. (1794, c. 429, P. R.; R. S., c. 116, s. 4; R. C., c. 113, s. 5; Code, s. 2644; Rev., s. 4278; C. S., s. 5802; 1931, c. 41.)

Editor's Note. — The 1931 amendment repealed the former prohibitory section and inserted the above in lieu thereof.

§ 116-43. **License for exhibiting any form of amusements and entertainments to be approved by president of University.**—No person, firm or corporation shall apply for or obtain from the governing body, or the representative of such governing body, or any county or incorporated city or town any license or permit to exhibit within the town of Chapel Hill or within five miles thereof any theatrical, sleight of hand, equestrian performance, or any dramatic recitation, or any rope or wire dancing, natural or artificial curiosities, or any concert, serenade or performance in music, singing or dancing, without first securing a written permission for said performance from the president of the University of North Carolina. A copy of the president's permission shall be filed with the governing body, or the representative of such governing body, or any county or incorporated city or town at the time said license or permit is applied for in all cases covered by this section. (1824, c. 1252, P. R.; R. S., c. 116, s. 3; R. C., c. 113, s. 6; Code, s. 2645; Rev., s. 4279; C. S., s. 5803; 1931, c. 41.)

Editor's Note. — The 1931 amendment rewrote this section.

The words "or any county", appearing in

line three and again in lines ten and eleven, were probably intended to read "of any county".

§ 116-44. **Violation of two preceding sections; misdemeanor; jurisdiction; participant must testify.**—Any person violating §§ 116-42 or 116-43 shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars, or be imprisoned not less than ten days nor more than thirty days; and if the offender is not brought to trial before some justice of the peace within twelve months after the commission of the offense, the superior court in term for the county in which the offense was committed may take jurisdiction of the same and punish the offender at the discretion of the court. No person shall be excused or incapacitated from testifying touching the violation of any of the two next preceding sections by reason of his having been a participant in the offenses; but the testimony of such person shall not be used against him in any

criminal prosecution on account of such participation. (R. C., c. 113, s. 7; 1879, c. 232, s. 3; Code, s. 2646; Rev., s. 4280; C. S., s. 5804.)

§ 116-44.1. Motor vehicle laws applicable to streets, alleys and driveways on campuses of the University of North Carolina; University trustees authorized to adopt traffic regulations.—(a) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campuses of the University of North Carolina. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campuses of the University of North Carolina as is now vested by law in the trustees of the University of North Carolina.

(b) The board of trustees of the University of North Carolina is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campuses not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars (\$50.00) or imprisonment for not exceeding 30 days.

(c) The board of trustees of the University of North Carolina shall cause to be posted at appropriate places on the campuses of the University notice to the public of applicable speed limits and parking laws and ordinances. (1947, c. 1070.)

ARTICLE 2.

Western Carolina Teachers College.

§ 116-45. Western Carolina Teachers College.—The Western Carolina Teachers College, successor to the Cullowhee Normal and Industrial School created a public institution by chapter 369 of the Private Laws of 1905, is and shall remain a corporation under the name of the Western Carolina Teachers College, with power to sue and be sued,² to make contracts and to exercise all other corporate rights and privileges incident to a public educational institution of the State and necessary to the management of the school. (1905 (Pr.), c. 369; C. S., s. 5839; 1925, c. 270.)

§ 116-46. Trustees; appointment; terms; to hold property.—From and after the first Monday in May, 1953, the board of trustees of Western Carolina Teachers College shall consist of twelve persons to be appointed by the Governor, three of whom shall be appointed for a term of two years, three for a term of four years, three for a term of six years and three for a term of eight years, the terms of all said trustees to begin on the first Monday in May, 1953, upon the expiration of the terms of the present board of trustees who shall continue to serve until that time. Thereafter, the successors to the members of the board of trustees shall be appointed by the Governor at the expiration of each term for terms of eight years. All of said trustees shall serve until their successors are duly appointed and qualified. Any vacancies occurring in the board shall be filled by the Governor for the unexpired term of the member who causes such vacancy. The Governor shall transmit the names of his appointees to the Senate at the next session of the General Assembly for confirmation. The said board

is hereby created a body corporate, to be known as "the board of trustees of Western Carolina Teachers College." All property, real, personal, or mixed, of every kind and character, now owned and under the control of the board of trustees of the Cullowhee Normal and Industrial School at Cullowhee, or owned and under the control of the State Board of Education or of any other person or corporation for the use and benefit of the Cullowhee Normal and Industrial School, is hereby transferred to and the title thereof is hereby vested in the board of trustees of the Western Carolina Teachers College who shall take, receive and hold the same for the use and benefit of the Western Carolina Teachers College; the trustees may purchase and hold real and personal property; receive donations, which donations shall be received by them for the purposes expressed by the donors thereof and shall be used for such purpose and no other, and do all other things necessary, proper and useful to carry out the provisions of this article. All property now owned by the Cullowhee Milling Company, a corporation, the stock of which is owned by the trustees, shall be transferred to the board of trustees of the Western Carolina Teachers College and the said corporation shall be dissolved according to law. The trustees shall take over the property of the Cullowhee Milling Company and use it for the benefit of the Western Carolina Teachers College as fully as if it was now owned by the Cullowhee Normal and Industrial School and not by the Cullowhee Milling Company. (1925, c. 270, s. 2; 1929, c. 251, s. 2; 1951, c. 1167, s. 1.)

Editor's Note. — The 1951 amendment inserted the first four sentences of this section in lieu of the former first five sentences.

§ 116-47. Meeting and organization of trustees.—It shall be the duty of said board of trustees to hold at Cullowhee an annual meeting, at which meeting they shall qualify and organize, and consider recommendations of the president of the normal school, and such other business as may properly come before them. The board shall elect, at such meeting, a chairman and vice-chairman, and appoint such committees among their membership as they may deem proper and wise for the conduct of this institution. They may also hold such special meetings from time to time as they may deem necessary. (1925, c. 270, s. 3.)

§ 116-48. Trustees to hold property.—It shall be the duty of the board of trustees of the Western Carolina Teachers College to take and hold all property, of whatever kind, heretofore held by the trustees of the Cullowhee Normal and Industrial School. The said boards of trustees and their successors in office shall hold in trust, for the State of North Carolina, all such property as is herein transferred to them, or to be later acquired by them for the purposes of said school. (1925, c. 270, s. 4; 1929, c. 251, s. 2.)

§ 116-49. Duties of trustees.—It shall be the duty of the board of trustees to provide for the spending of all moneys whatsoever belonging to, appropriated to, or in any way acquired by, the Western Carolina Teachers College; they shall provide for the erection of all buildings, the making of all needed improvements, the maintenance and enlargement of the physical plant of the said normal school, and may do all things deemed useful and wise by them for the good of the school: Provided, however, that before letting contracts for the erection of any new buildings, the plans for the same shall be approved by the State Superintendent of Public Instruction, by the secretary of the State Board of Health, and by the Insurance Commissioner of North Carolina. (1925, c. 270, s. 5; 1929, c. 251, s. 2.)

§ 116-50. Election of president, teachers, employees; qualifications of teachers.—It shall be the duty of the board of trustees to elect a president of the said normal school, to fix his salary, and his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of

office and their respective salaries. No person shall be elected as a teacher or shall teach in the regular classes of the Western Carolina Teachers College whose academic and professional qualifications are lower than that represented by graduation from a standard college or its undoubted equivalent: Provided, that persons who do not have such qualifications may be elected and may teach as a substitute or temporary teacher. (1925, c. 270, s. 6; 1929, c. 251, s. 2.)

§ 116-51. **Awarding of degrees.**—The trustees, upon the recommendation of the faculty, are hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions. (1925, c. 270, s. 1; 1929, c. 251, s. 1.)

§ 116-52. **Duties of president.**—It shall be the duty of the president to act as secretary of the board of trustees, to keep, in a book to be provided for the purpose, a full and complete record of all meetings of said board, and he shall be the custodian of all records, deeds, contracts and the like. He shall, with the approval of the chairman of the board, call all meetings of the board, giving proper notice to each member of every such meeting. Whenever the term of office of any member or members of the board of trustees is about to expire, or should a vacancy occur for any reason, the president shall immediately notify the Governor, to the end that he may make appointment pursuant to § 116-46. The president shall be the administrative and executive head of the institution. He shall prepare annually, for the board of trustees, a detailed report of the normal school for the preceding year, a copy of which report shall be sent to the State Superintendent of Public Instruction, and a copy shall be filed in the office of the president. (1925, c. 270, ss. 7, 11.)

§ 116-53. **Purpose of school, standards.**—The central purpose of the Western Carolina Teachers College shall be to prepare teachers for the public schools of North Carolina. To that end, the president shall prepare courses of study, subject to the approval of the State Superintendent of Public Instruction. It shall be the duty of the State Superintendent to visit the Western Carolina Teachers College from time to time, and to advise with the president about standards, equipment and organization, to the end that a normal school of high grade shall be maintained. The standards shall not be lower, in the main, than the average standard of normal schools of like rank in the United States. (1925, c. 170, s. 8; 1929, c. 251, s. 2.)

§ 116-54. **Practice or demonstration school.**—It shall be the duty of the board of education and county superintendent of Jackson County to co-operate with the board of trustees of the Western Carolina Teachers College in maintaining a practice or demonstration school. It shall be the duty of the board of trustees to furnish buildings, equipment, water and lights for such practice school, while the county board of education and the local school authorities shall furnish fuel and janitors, and shall pay all teachers in the practice school the regular State or county salary schedule, with the proviso that any excess in salaries on account of specially qualified teachers shall be paid by the board of trustees of the normal school. The qualifications of teachers in the practice school shall be fixed by the board of trustees; the nomination of such teachers shall be made jointly by the county superintendent and the president; but the practice teachers shall be elected by the school authorities of the local school district. The practice school, while under the general administration and control of the normal school authorities, shall remain an integral part of the county school system, and be subject to the same regulations as to supervision, standards, records, and the like as other graded schools of the county. In case of any disagreement between the officials herein referred to, said dispute shall be referred to the State Superintendent of Public Instruction, whose decision shall be final. (1925, c. 270, s. 9; 1929, c. 251, s. 2.)

§ 116-55. **Endowment fund.**—The board of trustees are hereby authorized to establish a permanent endowment fund, to be loaned to needy and worthy students. The board may receive gifts and donations, and may, after furnishing lights and power to the normal school, sell excess current, if any there shall be, at a rate approved by the Utilities Commission, to the people in the community, and set aside for said endowment any moneys coming to the institution from such sources. The board of trustees are hereby empowered to make rules and regulations for the proper safeguarding and loaning of said funds. (1925, c. 270, s. 10; 1933, c. 134, s. 8; 1941, c. 97.)

ARTICLE 3.

East Carolina College.

§ 116-56. **Incorporation and corporate powers.**—The trustees of the East Carolina College, established by an act of the General Assembly of North Carolina of one thousand nine hundred and seven, and located at Greenville, North Carolina, shall be and are hereby constituted a body corporate by and under the name and style of "The Board of Trustees of the East Carolina College," and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges incident to corporations of like character as are necessary for the proper administration of said College. (1907, c. 820, ss. 11, 12, 16; 1911, c. 159, s. 1; C. S., s. 5863; Ex. Sess. 1921, c. 27, s. 1; 1951, c. 641, s. 2.)

Editor's Note. — The 1921 amendment substituted the word "College" for the original words "Training School".

The 1951 amendment substituted East Carolina College for East Carolina Teachers College.

Session Laws 1951, c. 641, s. 1, provides: "The name of the East Carolina Teachers College is hereby changed to East Carolina College."

Session Laws 1951, c. 641, s. 3, provides:

"All appropriations made by the General Assembly to the East Carolina Teachers College shall be deemed to be for the East Carolina College and all other laws referring to the East Carolina Teachers College shall be considered as having reference to East Carolina College, as set forth in this act."

Validity of Bond for Establishment. —

See Cox v. Com., 146 N. C. 584, 60 S. E. 516 (1908).

§ 116-57. **Object of College.**—The College shall be maintained by the State for the purpose of giving to young white men and women such education and training as shall fit and qualify them to teach in the public schools of North Carolina. (1907, c. 820, s. 15; 1911, c. 159, s. 2; C. S., s. 5864.)

§ 116-58. **Diplomas and certificates.**—The board of trustees, upon the recommendation of the faculty, shall give those students in said College who have completed the prescribed course of study a diploma of graduation, and shall have the power to confer degrees; and they may upon the recommendation of the faculty grant certificates of proficiency for the completion of special courses. (1907, c. 820, s. 14; 1911, c. 159, s. 5; C. S., s. 5865; Ex. Sess. 1920, c. 68, s. 1.)

Editor's Note. — The 1920 amendment authorized the board of trustees to confer degrees.

§ 116-59. **Board of trustees.**—The board of trustees of the East Carolina College shall consist of twelve members, who shall be appointed by the Governor and confirmed by the Senate; in addition to this number, the Superintendent of Public Instruction shall be ex officio chairman.

The twelve appointed members of the first board of trustees authorized by this section shall be appointed for terms beginning July 1, 1929, and shall serve as follows: Four members for two years, four members for four years and four members for six years. Thereafter the members of the board shall serve for terms of six years and until their successors are appointed and qualified.

Members of the board of trustees may be removed from office by the Governor and Council of State after a hearing before them, upon complaint being filed by the chairman of the board.

Whenever a trustee shall fail to be present for one year at the regular meetings of the board, his place as trustee shall be deemed vacant, and said vacancy shall be filled by the Governor subject to the approval of the Senate when it next convenes. (1907, c. 820, s. 15; 1911, c. 159, s. 2; C. S., s. 5866; 1925, c. 94; 1925, c. 306, s. 7; 1927, c. 164; 1929, c. 259; 1951, c. 641, s. 2.)

Editor's Note. — The 1925 amendment provided for appointment by the Governor instead of the Board of Education. failing to be present for one year at the regular meetings of the board.

The 1927 amendment increased the number of trustees from nine to twelve, and added the provision relating to a trustee The 1951 amendment substituted, in the first paragraph, "East Carolina College" for "East Carolina Teachers College."

§ 116-60. **Course of study.**—The board of trustees shall have power to prescribe the course of study of said College and shall lay special emphasis on those subjects taught in the public schools of the State, and on the art and science of teaching. (1907, c. 820, s. 13; 1911, c. 159, s. 4; C. S., s. 5867; Ex. Sess. 1920, c. 68, s. 2.)

Editor's Note. — The 1920 amendment struck out the former provision that the board of trustees should not prescribe a curriculum beyond that which would fit and prepare a student for unconditional entrance into the freshman class of the University of North Carolina.

§ 116-61. **Discrimination against counties.**—The board of trustees shall make no rules that discriminate against one county in favor of another in the admission of pupils into said College. (1907, c. 820, s. 17; C. S., s. 5868.)

§ 116-62. **Power of exclusion from dormitories.**—When, in the judgment of the board of trustees, the best interest of the College will be promoted thereby, the board may decline to admit young men into the rooms of the dormitories. (1911, c. 159, s. 6; C. S., s. 5869.)

§ 116-63. **Vesting the rights and titles.**—All rights and titles heretofore acquired in any way for the use and benefit of said College shall vest and remain in the said board of trustees as herein incorporated. (1911, c. 159, s. 7; C. S., s. 5870; Ex. Sess. 1921, c. 27, s. 2.)

Editor's Note. — The 1921 amendment substituted "College" for "Training School."

§ 116-64. **Biennial reports to Governor.**—The trustees shall report biennially to the Governor, before the meeting of each General Assembly, the operation and condition of said College. (1907, c. 820, s. 15; 1911, c. 159, s. 8; C. S., s. 5871.)

ARTICLE 4.

Appalachian State Teachers College.

§ 116-65. **Name of school.**—The name of the institution first known as the "Appalachian State Training School" and later changed to "Appalachian State Normal School" at Boone, North Carolina, formerly operated under the provisions of §§ 5855-5862 of the Consolidated Statutes of 1919, is hereby changed to the "Appalachian State Teachers College." (1925 (Pr.), c. 204, s. 1; 1929 (Pr.), c. 66.)

§ 116-66. **Trustees; transfer of property.**—The board of trustees of the Appalachian State Teachers College, shall consist of nine persons to be appointed by the Governor. Within thirty days from March 10th, 1925, the Governor shall

name five members of the board and in naming the said five members, he shall designate which members of the present board are to be succeeded by the five so named. Within six months from March 10th, 1925, the Governor shall name the four other members of the said board and in naming the said four other members, he shall designate which of the members of the present board are to be succeeded by two of the four so named. The term of office of the first five named by the Governor shall expire on the first day of May, one thousand nine hundred and twenty-seven. The term of office of the last four named by the Governor shall expire on the first day of May, one thousand nine hundred and twenty-nine. Any vacancies occurring in said board shall be filled by the Governor. The Governor shall transmit the names of the trustees appointed by him to the Senate at the next session of the General Assembly for confirmation. The said board is hereby created a body corporate to be known as "The Board of Trustees of the Appalachian State Teachers College." All property, real, personal or mixed of every kind and character now owned and under the control of the board of trustees of the Appalachian Training School or the Appalachian State Normal School, at Boone, North Carolina, or owned and under the control of the State Board of Education for the use and benefit of the Appalachian Training School or the Appalachian State Normal School, or under the control and in the possession of any other person for the use and benefit of the said institutions, is hereby transferred to and the title thereof vested in the board of trustees of the Appalachian State Teachers College, who shall take, receive and hold the same for the use and benefit of the said school; the said trustees may purchase, and hold real and personal property, receive donations and do all things necessary and useful to carry out the provisions of this article. (1925 (Pr.), c. 204, s. 2; 1929 (Pr.), c. 66.)

§ 116-67. **Term of office of trustees; vacancies.**—Except as herein otherwise provided, the trustees of the Appalachian State Teachers College shall be appointed for the term of four years each. Whenever the term of office of any member or members of the board of trustees is about to expire, or should a vacancy occur for any reason, the president shall immediately notify the Governor, to the end that he may make appointments. (1925 (Pr.), c. 204, s. 12; 1929 (Pr.), c. 66.)

§ 116-68. **Meetings.**—It shall be the duty of said board of trustees to hold at Boone an annual meeting at which meeting they shall qualify and organize, and consider recommendations of the president of the College, and such other business as may properly come before them. The board shall elect, at such meeting, a chairman and vice-chairman, and appoint such committees among their membership as they may deem proper and wise for the conduct of this institution. They may also hold such special meetings from time to time as they may deem necessary. (1925 (Pr.), c. 204, s. 3; 1929 (Pr.), c. 66.)

§ 116-69. **Duty to hold property.**—It shall be the duty of the board of trustees of the Appalachian State Teachers College to take and hold all property, of whatever kind, heretofore held by the trustees of the Appalachian Training School or the Appalachian State Normal School. The said board of trustees and their successors in office shall hold in trust, for the State of North Carolina, all such property as is herein transferred to them, or to be later acquired by them for the purpose of said school. (1925 (Pr.), c. 204, s. 4; 1929 (Pr.), c. 66.)

§ 116-70. **Duty to provide for spending of moneys and erection of buildings, improvements, etc.**—It shall be the duty of the board of trustees to provide for the spending of all moneys whatsoever belonging to, appropriated to, or in any way acquired by the Appalachian State Teachers College; they shall provide for the erection of all buildings, the making of all needed improvements, the maintenance and enlargement of the physical plant of said normal school,

and may do all things deemed useful and wise by them for the good of the school, not contrary to the educational policies of the State or the laws of North Carolina: Provided, however, that before letting contracts for the erection of any new buildings, the plans for the same shall be approved by the State Superintendent of Public Instruction, by the Secretary of the State Board of Health, and by the Insurance Commissioner of North Carolina. (1925 (Pr.), c. 204, s. 5; 1929 (Pr.), c. 66.)

§ 116-71. Election of president and faculty.—It shall be the duty of the board of trustees to elect a president of the said normal school, to fix his salary, and his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office and their respective salaries. (1925 (Pr.), c. 204, s. 6; 1929 (Pr.), c. 66.)

§ 116-72. Board to confer degrees.—The trustees, upon recommendation of the faculty, are hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions in America. (1929 (Pr.), c. 66.)

§ 116-73. President to keep record of board meetings; reports.—It shall be the duty of the president to act as secretary of the board of trustees, to keep in a book to be provided for the purpose a full and complete record of all meetings of said board, and he shall be the custodian of all records, deeds, contracts and the like. He shall, with the approval of the chairman of the board, call all meetings of the board, giving proper notice to each member of every such meeting. The president shall be the administrative and executive head of the institution. He shall prepare annually for the board of trustees a detailed report of the normal school for the preceding year, a copy of which report shall be sent to the State Superintendent of Public Instruction, and a copy shall be filed in the office of the president. (1925 (Pr.), c. 204, s. 7; 1929 (Pr.), c. 66.)

§ 116-74. Purpose of school; State Superintendent to visit school.—The central purpose of the Appalachian State Teachers College shall be to prepare teachers for the public schools of North Carolina. To that end the president shall prepare courses of study, subject to the approval of the State Superintendent of Public Instruction. It shall be the duty of the State Superintendent to visit the Appalachian State Teachers College from time to time, and to advise with the president about standards, equipment and organization, to the end that a normal school of high grade be maintained. The standards shall not be lower, in the main, than the average standard of normal schools of like rank in the United States: Provided, however, that no person shall teach in the regular classes of the normal school, unless as a substitute or temporary teacher, whose academic and professional qualifications are lower than that represented by graduation from a standard college, or its undoubted equivalent. (1925 (Pr.), c. 204, s. 8; 1929 (Pr.), c. 66.)

§ 116-75. Practice or demonstration school.—It shall be the duty of the board of education and county superintendent of Watauga County to cooperate with the board of trustees of the Appalachian State Teachers College in maintaining a practice or demonstration school. It shall be the duty of the board of trustees to furnish buildings, equipment, water and lights for such practice school, while the county board of education and the local school authorities shall furnish fuel and janitors, and shall pay all teachers in the practice school the regular State or county salary schedule, with the proviso that any excess in salaries on account of specially qualified teachers shall be paid by the board of trustees of the normal school. The qualifications of teachers in the practice school shall be fixed by the board of trustees; the nomination of such

teachers shall be made jointly by the county superintendent and the president; but the practice teachers shall be elected by the school authorities of the local school district. The practice school while under the general administration and control of the normal school authorities, shall remain an integral part of the county school system, and be subject to the same regulations as to supervision, standards, records and the like as other graded schools in the county. In case of any disagreement between the bodies herein referred to, said dispute shall be referred to the State Superintendent of Public Instruction, whose decision shall be final. (1925 (Pr.), c. 204, s. 9; 1929 (Pr.), c. 66.)

§ 116-76. To establish permanent endowment fund.—The board of trustees are hereby authorized to establish a permanent endowment fund, to be loaned to needy and worthy students. The board may receive gifts and donations and may, after furnishing lights and power to the normal school, sell excess current, if any there shall be, at a rate approved by the Utilities Commission, to the people in the community, and set aside for said endowment any moneys coming to the institution from such sources. The board of trustees are hereby empowered to make rules and regulations for the proper safeguarding and loaning of said funds. (1925 (Pr.), c. 204, s. 10; 1929 (Pr.), c. 66; 1933, c. 134, ss. 1, 8.)

§ 116-76.1. Trustees of endowment fund; gifts; investments and use of income.—(1) The board of trustees of the Appalachian State Teachers College, together with other persons to be appointed by them, not to exceed nine in number, and to be known as the trustees of the endowment fund of the Appalachian State Teachers College, are hereby created a body politic to do specific things hereinafter enumerated.

(2) The chairman of the board of trustees of the Appalachian State Teachers College shall be the chairman of the trustees of the endowment fund.

(3) The trustees may receive gifts, donations, bequests, and use the same, together with any other moneys or properties of any kind that may come to the board of trustees of the Appalachian State Teachers College or to the trustees of the endowment fund of the Appalachian State Teachers College—excepting, always, State appropriations and moneys received from tuition, fees and the like, collected from students and used for the general operations of the College—and set the same up as a permanent endowment fund.

(4) It shall be the duty of the trustees of the endowment fund to invest, sell, and/or reinvest any funds coming into their hands at any time and in such manner as, in their judgment, they may deem just, proper, and advantageous to the fund.

(5) The principal of said endowment fund shall be kept intact; only the interest, dividends or incomes may be expended each year.

(6) In the management of the endowment fund no discrimination shall be made against any person from any state that may be eligible to register at the Appalachian State Teachers College.

(7) It is not the intent that the income from this endowment fund take the place of State appropriations or any part thereof, but to supplement the State appropriations to the end that the College (1) may increase its functions, (2) may enlarge its areas of service, and (3) may become more useful to a greater number of people.

(8) All incomes derived from the endowment fund are to be used to bring teachers with superior training and widely recognized ability to the College campus:

1. To study the child and his development.
2. To study the learning processes.
3. To study the best teaching techniques.
4. To study education, especially elementary education.

5. To hold conferences, to experiment, to lecture, to write, to teach, to inspire, to the end that student teachers in attendance at the College may gather greater knowledge, power, and skill, and return to their schools with new zeal and with higher goals, giving finer opportunities to children everywhere.

(9) Nothing in this section shall be construed to prevent the trustees of the endowment fund from receiving gifts, donations and bequests, and from using the same as the donor or donors designate.

(10) The trustees of the endowment fund are authorized to do all things deemed useful and wise by them to carry out the true intent of this section. (1943, c. 193, ss. 1-10; 1951, c. 1157, s. 1.)

Editor's Note. — The 1951 amendment rewrote subsection (4).

§ 116-77. Hunting and fishing on premises. — It shall be unlawful for anyone to hunt or fish on the premises of the Appalachian State Teachers College without written permission. Any person so doing shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court. He may have a preliminary hearing before any justice of the peace or before the mayor of the town of Boone. The board of trustees may fix a fee for hunting or fishing upon said premises and set aside any proceeds therefrom for the loan fund. (1925 (Pr.), c. 204, s. 11; 1929 (Pr.), c. 66.)

§ 116-78. Infirmary arrangement to be made with Watauga Hospital, Inc. — The trustees of the Appalachian State Teachers College are hereby authorized to make such contract or contracts with the Watauga Hospital, Incorporated, for the reception of and treatment in of the officers, teachers and students of the Appalachian State Teachers College in the Watauga Hospital, Incorporated, as may secure the benefit of medical treatment for them.

The trustees are further authorized and empowered to pay any cost of such treatment, nursing and care to the Watauga Hospital, Incorporated, from time to time in accordance with the contract or contracts hereinbefore authorized, provided, such Appalachian State Teachers College shall thereby assume no responsibility for the proper conduct of the said Watauga Hospital, Incorporated.

The said board of trustees may aid in the construction of the Watauga Hospital, Incorporated, out of any funds available or hereafter may be secured for the purpose of erecting an infirmary. (1929, c. 212; 1929 (Pr.), c. 66.)

ARTICLE 5.

Pembroke State College.

§ 116-79. Incorporation and corporate powers; location. — The Pembroke State College shall be and remain a State institution for educational purposes, at Pembroke, North Carolina, in the county of Robeson, under the name and style aforesaid, and by that name may have perpetual succession, sue and be sued, contract and be contracted with, have and hold school property, including buildings, lands and all appurtenances thereto, situated as aforesaid; acquire by purchase or condemnation, under the general laws pertaining to eminent domain, donation or otherwise, real property for the purpose of maintaining and enlarging the said College, which shall be and remain for the purpose of the education of the Cherokee Indians of Robeson County; acquire by purchase, donation, or otherwise, personal property for the purpose of said College. (1887, c. 400, ss. 1, 6; Rev., s. 4236; 1911, c. 168, ss. 1, 2; 1911, c. 215, s. 4; 1913, c. 123, ss. 4, 6; C. S., s. 5843; 1941, c. 323, s. 1; 1945, c. 817, s. 1; 1949, c. 58, s. 2.)

Editor's Note. — The 1941 amendment substituted "Pembroke State College for Indians" for "Cherokee Indian Normal School of Robeson County".

The 1945 amendment inserted the words "at Pembroke, North Carolina" and rewrote the latter part of the section.

Session Laws 1949, c. 58, s. 1, changed

the name of the Pembroke State College And section 2 of said chapter amended this for Indians to "Pembroke State College." article accordingly.

§ 116-80. Supervision by State Board of Education.—The State Board of Education shall make all needful rules and regulations concerning the expenditure of funds, the selection of president, teachers and employees of said Pembroke State College. The State Board of Education shall control and supervise said school to the same extent substantially as that provided for the organization, control and supervision of the white normal and training schools; and it may change the organization to suit conditions insofar as the needs of the school and the funds appropriated demand such change. (1931, c. 276, s. 3; 1941, c. 323, s. 2; 1949, c. 58, s. 2.)

§ 116-81. Trustees.—The Governor shall appoint eleven trustees for the Pembroke State College. The terms of office of nine of such trustees shall begin on April 1, 1937, and the terms of office of the remaining two shall begin on April 1, 1939. The terms of office of all trustees shall be four years and until the successors of such trustees are appointed and qualified. The trustees shall be such as the Governor shall determine, after such inquiry and consideration as he may desire to make, to be fit, competent and proper for the discharge of all the duties that shall devolve upon them as such trustees. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly following their appointment the names of persons appointed by him for confirmation.

The Governor shall have the power to remove any member of the board of trustees provided for in this section whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14; 1929, c. 238; 1931, c. 275; 1941, c. 323; 1949, c. 58, s. 2.)

§ 116-82. Chairman, election, duties and powers.—The trustees shall elect one of their own number chairman and such chairman shall have the duties and the powers that devolve upon the president of corporations in similar cases, or such as shall be defined by the trustees. (1887, c. 400, s. 2; Rev., s. 4237; 1911, c. 168, s. 2; C. S., s. 5845; 1945, c. 817, s. 2.)

Editor's Note. — The 1945 amendment rewrote this section.

§ 116-83. Trustees to employ and discharge teachers and manage school.—The board of trustees of said Pembroke State College shall have the power to employ and discharge teachers, to prevent negroes from attending said school, and to exercise the usual functions of control and management of said school, their action being subject to the approval of the State Board of Education. (1911, c. 168, s. 3; C. S., s. 5846; 1941, c. 323, s. 1; 1949, c. 58, s. 2.)

§ 116-84. Department for teaching of deaf, dumb and blind.—The board of trustees of the Pembroke State College are hereby authorized, empowered and directed to employ some person trained in the teaching of the deaf and dumb or blind and to provide a department in said school in which said deaf, dumb and/or blind Indian children of Robeson and surrounding counties may be taught, no provisions being now made for the teaching of said children, the said teacher to be employed in the same manner and under the same rules and regulations governing other teachers in the said school. (1935, c. 435; 1941, c. 323, s. 1; 1949, c. 58, s. 2.)

§ 116-85. Admission and qualification of pupils.—In order to protect and promote and preserve for the education of all persons who are now and may hereafter be entitled to admission into the Pembroke State College, there shall be a committee composed of Indians, residents of Robeson County, as pro-

vided in chapter one hundred ninety-five, Public Laws of North Carolina, one thousand nine hundred and twenty-nine, and all questions affecting the race of those applying for admission into the Pembroke State College shall be referred to said committee, who shall have original and exclusive jurisdiction to hear and determine all questions affecting the race of any person, or persons, applying for admission into, or attending, the Pembroke State College, located at Pembroke, North Carolina.

An appeal shall lie from the action of said committee to the superior court of Robeson County, and such appeal shall be taken and perfected only in the following manner: A notice of appeal shall be given either at the time of the announcement of the action of the committee by parole, or at any time within fifteen (15) days from the time of the announcement of the action of the committee, by written notice, which shall state that the appellant does, in good faith, intend to appeal therefrom to the superior court of Robeson County, and said written notice must be served upon the chairman of said committee, or the secretary thereof, or upon two members of said committee. The appellant shall, also, at the time of the service of said notice, pay to the person upon whom the same is served, or to the secretary of the said committee if the notice is given by parole at the time of the announcement of the action of the committee, the sum of one dollar (\$1.00) which sum shall be paid to the secretary of the said Indian committee. The secretary of the said Indian committee shall certify thereupon the proceedings with reference to the matter appealed from as a return to the notice of appeal, and the said written notice so served, or a statement thereof, in case the same is given by parole, and the certified record of the proceedings had by the said committee, and their action thereon, shall be filed by the appellant in the office of the clerk of the superior court of Robeson County and shall be docketed on the civil issue docket of the superior court of Robeson County in all respects and under such rules and limitations as now apply to appeals from justices of the peace, to the superior court. The record certified from said committee shall state fully the contentions of those favoring the admission to the Pembroke State College and the said cause shall be tried in the superior court, as herein provided, upon the issues raised upon said contentions and shall be tried in said superior court upon the issues raised upon these stated contentions and the action of the said committee.

The said Indian committee, through its chairman or secretary, shall have the same power to subpoena witnesses and compel their attendance as provided under the law relating to references.

The said Indian committee is now composed of M. L. Lowry, Burlleigh Lowry, J. B. Oxendine, William Wilkins, George Locklear, Dawley Maynor, and Wiley Thompson, and the said members of the said committee shall serve until their successors are appointed in the following manner: Whenever a vacancy on said committee shall occur by death, resignation, or otherwise, the remaining members of said committee shall appoint a member of the Indian race, who is a resident of Robeson County, to fill such vacancy.

The qualifications for admission to the Pembroke State College, shall hereafter be as follows:

(a) Persons of the race of Cherokee Indians of Robeson County, who are descendants of those that were determined to constitute those who were within the terms and contemplation of chapter fifty-one, laws one thousand eight hundred and eighty-five and within the census taken pursuant thereto by the county board of education of Robeson County, of either sex, resident in North Carolina, who are not under thirteen years of age.

(b) Persons who are Indians who are duly accredited members of any tribe of Indians whose Indian status is recognized and accepted by the Bureau of Indian Affairs in the Department of the Interior of the United States of America.

All such persons as may be found to be within the classification specified in

subsections (a) and (b) herein, may attend the Pembroke State College located at Pembroke, North Carolina, for the education of the Indian race only, and no others shall be admitted to said College.

The said Indian committee, as heretofore constituted, and as herein provided, shall observe strictly the provisions herein set out as to racial qualifications of all persons who desire to enter Pembroke State College at Pembroke, North Carolina, which is for the education of the Indian race only; and, in case there is any matter brought to their attention, in which the racial qualifications of any person who desires to enter, or who has already entered the said Pembroke State College is brought in question, the said committee shall require all those who seek to enter themselves, or to promote the entrance of such persons in said College, to prove and to establish to the satisfaction of the said committee that such persons who desire to enter are within the qualifications herein set out and are entitled to enter the said College and, unless the said committee shall be fully satisfied that such applicants are thus qualified, they shall enter upon their minutes an order refusing such admission and if they are so satisfied as to such persons' racial qualifications, they shall enter an order admitting such persons. No order admitting an applicant shall be held or construed to be a judgment constituting *res adjudicata*, and no rights shall flow therefrom that will interfere with the reopening of such order at any time by the said committee upon its own motion, or at the instance of others.

When an appeal is entered and prosecuted in the superior court from an order denying an admission to said College by said committee, the burden of proof shall be upon the applicants to prove and to establish (a) to the full satisfaction of the presiding judge that the evidence on behalf of the applicants, if believed, fully establishes their rights to admission under the terms of this law; and (b) to the full satisfaction of the judge that the evidence offered on behalf of the applicant is credible, and if the presiding judge shall be fully satisfied of these requirements, then he shall submit the issues arising upon said appeal to the jury, and the burden of proof shall be upon the applicants throughout the said trial to establish to the full satisfaction of the jury that those who seek to enter the said College come within and have all the racial qualifications as set out herein, and unless the jury shall so find, they shall return a verdict against the applicants; and it shall be the duty of the presiding judge so to instruct the jury, whether requested so to do, or not. In case the presiding judge is not satisfied that the evidence on behalf of the applicants meets the requirements above set out, to the court's satisfaction, the said cause shall not be submitted to the jury, but said appeal shall be dismissed, and upon such dismissal the court shall enter a judgment denying the admission of such applicants to said College.

Whenever the said committee, or the court upon appeal, shall decide that any person, or persons are not entitled to admission into said College, then it shall not be lawful for any teacher, or any other person in authority at said College, to admit such person, or persons, to the said College.

Whenever the said committee shall decide that any person, or persons are not entitled to admission into said College, the said committee shall, in writing, at once notify the chairman of the board of trustees, or principal, or president of said College, by whatever name called, and after the receipt of such notice, such person, or persons, so denied admission shall be and remain ineligible for admission therein until said decision shall be reversed, either by the said committee or the superior court of Robeson County, or the Supreme Court on appeal, and shall not thereafter be admitted unless and until notice of such reversal is received.

Any reference in the laws of this State, either in public, public-local, or private acts, to other persons than those specified in subsections (a) and (b) herein, that prescribe qualifications for admission into said College, shall not be evidence in any hearing before the said Indian committee, or the superior court on appeal, and the issues in such trials, including any appeal to the Supreme Court.

shall be and remain a question of fact, or an issue of fact solely, and the said committee and the said courts shall determine whether the appeals for admission to said College come within the factual requirements of said subsections (a) and (b) herein, and such references in other laws pertaining to other persons shall not be competent evidence in any of said hearings, or trials. (1887, c. 400, s. 10; 1893, c. 515, s. 2; Rev., s. 4241; 1911, c. 215, ss. 2, 3; 1913, c. 123, s. 4; C. S., s. 5847; 1929, c. 195, s. 6; 1941, c. 323, s. 1; 1945, c. 817, s. 3; 1949, c. 58, s. 2.)

Editor's Note. — The 1945 amendment Robeson who have come in since 1885. rewrote this section. Goins v. Training School, 169 N. C. 736,

This section applies to residents of 86 S. E. 629 (1915).

§ 116-86. **Tax exemption.**—All property, real and personal, acquired by this corporation, by purchase, donation, or otherwise, as long as it is used for educational purposes, shall be exempt from taxation, whether on the part of the State or county. (1887, c. 400, s. 8; Rev., s. 4239; C. S., s. 5848.)

ARTICLE 6.

Vocational and Normal School for Indians in Certain Counties.

§ 116-87. **Establishment of vocational and normal school for Indians.**—The State Board of Education is hereby authorized and empowered to establish a vocational and normal school at any place it may deem most suitable for teaching and training the young Indian men and women not otherwise provided for. (1941, c. 370, s. 1.)

Cross Reference. — As to other provisions for schools for Indians in certain counties, see § 115-66.

§ 116-88. **Courses of instruction; preparatory department; removing or closing school.**—In said vocational and normal school so created there shall be provided such courses of instruction in vocational education, teacher training and higher education as the State Board of Education and the State Superintendent of Public Instruction may deem necessary and proper in order to furnish said Indians the necessary and proper educational facilities. A preparatory department may be established in connection with any such school, and the said State Board of Education shall have the power and authority to remove or close any such school established under the authority contained in this article. (1941, c. 370, s. 2.)

§ 116-89. **Board of trustees; powers; terms and compensation; election of teachers.**—The Governor of the State of North Carolina shall have the power to appoint a board of six trustees for any school created under the provisions of this article, which board shall have the general management of such school and such other powers for the management thereof as are not vested in the State Board of Education or the State Superintendent. In addition to the six members above provided for, the State Superintendent of Public Instruction shall be ex officio a member of said board of trustees and chairman thereof.

Two members of the board of trustees shall be appointed for a term of two years, two for four years, and two for six years, and thereafter, as vacancies occur by the expiration of the term of office of each, his successor shall be appointed for a term of six years. Vacancies occurring by resignation or death, or otherwise, of any member of said board of trustees before the expiration of his term of office, shall be filled by the Governor for the unexpired term. The original appointments shall be made by the Governor in the month of May, one thousand nine hundred and forty-one. The members of the board of trustees shall receive no compensation for their services other than actual expenses while attending meetings of the board.

The board of trustees shall elect one of its members as secretary. Said board

shall have the power, subject to the approval of the State Superintendent of Public Instruction, to elect the teachers who shall teach in any such school. (1941, c. 370, s. 3.)

§ 116-90. **Disbursement of funds for expenses.**—All disbursements, including disbursements for salaries and other expenses, shall be disbursed and expended under the terms of the Executive Budget Act. (1941, c. 370, s. 4.)

§ 116-91. **Election of superintendent; salary; duties.**—The State Board of Education shall elect a superintendent of any school established under the provisions of this article, and fix his salary. His duties shall be outlined by the State Board of Education and he shall perform such other duties in the educational department of the State as the State Superintendent of Public Instruction may direct. His salary and expenses shall be paid out of the annual appropriation hereinafter provided for upon the requisition of the State Superintendent of Public Instruction. (1941, c. 370, s. 5.)

ARTICLE 7.

Negro Agricultural and Technical College of North Carolina.

§ 116-92. **Establishment and name.**—A college of agricultural and mechanical arts is hereby established for the colored race to be located at some eligible site within this State. Such institution shall be denominated the Negro Agricultural and Technical College of North Carolina. (1891, c. 549, ss. 1, 2; Rev., s. 4221; 1915, c. 267; C. S., s. 5826.)

§ 116-93. **Object of College.**—The leading object of the institution shall be to teach practical agriculture and the mechanic arts and such branches of learning as relate thereto, not excluding academical and classical instruction. (1891, c. 549, s. 3; Rev., s. 4222; C. S., s. 5827.)

§ 116-94. **Board of trustees; appointments; vacancies; chairman.**—The management and control of the College and the care and preservation of all its property shall be vested in a board of trustees, consisting of sixteen members, one of whom shall be the State Superintendent of Public Instruction (as provided in § 116-100). The other fifteen members shall be divided into three classes, and five shall be appointed by the Governor on or after January first, one thousand nine hundred and forty-three, and five on or after January first, one thousand nine hundred and forty-five, and five on or after January first, one thousand nine hundred and forty-seven, each and all to be appointed for terms of six years from January first of the year in which they are appointed, respectively. Members of the board so appointed shall serve until their successors are appointed and qualified. Appointments heretofore made by the Governor are hereby ratified and confirmed. Any vacancies which, for any cause, may occur, shall be filled by the Governor for the unexpired term. The board shall annually elect one of their number to be chairman of the board of trustees, and may elect a vice-chairman. The board shall also appoint a secretary, who may or may not be a member of the board. (1891, c. 549, s. 4; 1899, c. 389, s. 1; Rev., s. 4223; C. S., s. 5828; 1943, c. 132.)

Cross Reference. — For statute making the Superintendent of Public Instruction an ex officio member of the board, see § 116-100.

Editor's Note. — The 1943 amendment rewrote this section. Prior to the amend-

ment the board of trustees, consisting of fifteen members with six-year terms, was elected by the General Assembly. The amendment added provisions for the election of vice-chairman and secretary.

§ 116-95. **Meetings of board; compensation; executive board.**—The number and times of the meetings of the board of trustees shall be fixed by the

board, and the trustees shall not receive any pay or per diem, but only their traveling expenses and hotel fare, and that only for four times in each year. The board of trustees shall have power to elect an executive board of three of their own number, who shall have the immediate management of the institution when the full board is not in session. (1899, c. 389, ss. 2, 3; Rev., s. 4224; C. S., s. 5829.)

§ 116-96. Powers of trustees.—The board of trustees shall have power to prescribe such rules for the management and preservation of good order and morals at the College as are usually made in such institutions; shall have power to appoint its president, instructors, and as many other officers or servants as to them shall appear necessary and proper, and shall fix their salaries, and shall have charge of the disbursement of the funds, and have general and entire supervision of the establishment and maintenance of the College, and the president and instructors in the College, by and with the consent of the board of trustees, shall have the power of conferring such certificates of proficiency or marks of merit and diplomas as are usually conferred by such colleges.

The board of trustees is specifically authorized to direct the president of the board, for and on behalf of the Negro Agricultural and Technical College of North Carolina, to execute as principal a good and sufficient bond with sureties, securing to the federal government the safekeeping and return of all such federal property as the College may receive from the federal government for reserve officers training corps programs or for other similar purposes. (1891, c. 549, s. 5; Rev., s. 4225; C. S., s. 5830; 1949, c. 130.)

Editor's Note. — The 1949 amendment added the second paragraph.

§ 116-97. Admission of pupils.—In addition to the powers hereinbefore granted, the board of trustees shall have power to make such rules and regulations with respect to the admission of pupils to the College for the various congressional districts of this State as they may deem equitable and right, having due regard to the colored population thereof. (1891, c. 549, s. 7; Rev., s. 4226; C. S., s. 5831.)

§ 116-98. Power to receive property, and proportion of congressional donations.—The board of trustees is empowered to receive any donation of property which may be made to the College, and shall have power to invest or expend the same for the benefit of the College; and shall have power to accept on behalf of this College such proportion of the fund granted by the Congress of the United States to the State of North Carolina for industrial and agricultural training as is apportioned to the colored race, in accordance with the act or acts of the Congress in relation thereto. (1891, c. 549, ss. 6, 12; Rev., s. 4227; C. S., s. 5832.)

ARTICLE 8.

North Carolina College at Durham.

§ 116-99. Trustees of the North Carolina College at Durham.—There shall be twelve (12) trustees for the North Carolina College at Durham. Within thirty days from March 10, 1925, the Governor shall appoint seven (7) members of said board and within six months from March 10, 1925, the Governor shall appoint five (5) members of said board. The terms of office of such trustees shall be four years and until successors are appointed and qualified. At the time of making such appointments he shall designate the members of the present board who are to be succeeded by his appointees. All vacancies are to be filled by the Governor. The Governor shall transmit to the Senate at the next session of the General Assembly following his appointment the names of the persons appointed by him for confirmation. The Governor shall have the power to remove any member of the board of trustees whenever in his opinion it is to the best interest of the State

to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9a, 13, 14; 1947, c. 189.)

Editor's Note. — The 1947 amendment "North Carolina College for Negroes" in substituted "North Carolina College" for the first sentence.

§ 116-100. Graduate courses for negroes; Superintendent of Public Instruction as ex officio member of boards of trustees. — The board of trustees of the North Carolina College at Durham is hereby authorized and empowered to establish from time to time such graduate courses in the liberal arts field as the demand may warrant, and the funds of the said North Carolina College at Durham justify. Such courses so established must be standard.

The board of trustees of the North Carolina College at Durham is authorized and empowered to establish departments of law, pharmacy and library science at the above-named institution whenever there are applicants desirous of such courses. Said board of trustees of the North Carolina College at Durham may add other professional courses from time to time as the need for the same is shown, and the funds of the State will justify.

The board of trustees of the Negro Agricultural and Technical College at Greensboro may add graduate and professional courses in agricultural and technical lines as the need for same is shown and the funds of the State will justify, and establish suitable departments therein.

In the event there are negroes resident in the State properly qualified who can certify that they have been duly admitted to any reputable graduate or professional college and said graduate or professional courses are being offered at the University of North Carolina and are not being offered at the North Carolina College at Durham, then the board of trustees of North Carolina College at Durham when said certification has been presented to them by the president and faculty of the North Carolina College at Durham, may pay tuition and other expenses for said student or students at such recognized college in such amount as may be deemed reasonably necessary to compensate said resident student for the additional expense of attending a graduate or professional school outside of North Carolina, and the Budget Commission may upon such presentation reimburse the North Carolina College at Durham the money so advanced. It is further provided that the student applying for such admission must furnish proof that he or she has been duly admitted to said recognized professional College. In the case of agricultural or technical subjects such students desiring graduate courses should apply to the Agricultural and Technical College at Greensboro, North Carolina. The general provisions covering students in the liberal arts field as stated in this section shall apply. In no event shall there be any duplication of courses in the two institutions.

Said boards of trustees are authorized, upon satisfactory completion of prescribed courses, to give appropriate degrees.

It is further stipulated that the Superintendent of Public Instruction for North Carolina shall be a member ex officio of the boards of trustees of the North Carolina College at Durham and Agricultural and Technical College at Greensboro, and shall advise with the boards of trustees of said Colleges upon the courses to be offered, and the certification of students to other colleges. In case of needless duplication of graduate or professional courses in either College, the Superintendent of Public Instruction shall be charged with the duty of reporting the same to the board of trustees of either institution, and the same shall be remedied. In case of failure to remedy the same, he shall report such failure to the Budget Bureau which will have the power and authority in its judgment to withhold any part of the appropriation from the institution so offending until said duplication is discontinued.

Whenever the appropriations for the purposes of this section are insufficient, the board of trustees of the North Carolina College at Durham and the board of trustees of the Agricultural and Technical College shall present the situation to the assistant director of the budget and the Governor of North Carolina. The

Governor and Council of State are hereby empowered to allocate from contingency and emergency fund such funds as may be necessary to carry out the purposes of the section. (1939, c. 65; 1947, c. 189; 1951, c. 1108, s. 1.)

Cross Reference. — As to other provisions concerning the Negro Agricultural and Technical College, see § 116-92 et seq.

Editor's Note. — The 1947 amendment substituted "North Carolina College at Durham" for "North Carolina College for

Negroes."

The 1951 amendment inserted the words "being offered at the University of North Carolina and are" near the beginning of the fourth paragraph, and rewrote the last paragraph.

ARTICLE 9.

Negro State Teachers Colleges.

§ 116-101. **Power of State Board of Education to establish.**—The State Board of Education is hereby empowered to establish normal schools at any place it may deem most suitable, either in connection with one of the colored schools of high grade in the State, or otherwise, for teaching and training young men and women of the colored race, from the age of fifteen to twenty-five years, for teachers in the common schools of the State for the colored race. A preparatory department may be established in connection with the colored normal schools. And such Board shall have the power to remove or close any of the existing State normal schools for the colored race. (1876-7, c. 234, s. 2; 1879, c. 54, ss. 1, 2; 1881, c. 91; 1881, c. 141, s. 5; Code, ss. 2651, 2652; 1901, c. 565, s. 1; Rev., s. 4180; C. S., s. 5850.)

§ 116-102. **State Board of Education to control and manage negro State teachers colleges.**—The State Board of Education shall have supervision, and shall prescribe rules and regulations for the control, management, and enlargement of each of the following normal schools: The Elizabeth City State Teachers College, Elizabeth City; Fayetteville State Teachers College, Fayetteville; Winston-Salem Teachers College, Winston-Salem.

The State Board of Education shall make all needful rules and regulations concerning the expenditure of funds, the selection of principals, teachers, and employees. (C. S., s. 5775; 1921, c. 61, s. 8; 1925, c. 306, s. 9; 1925 (Pr.), c. 170; 1931, c. 276, s. 1; 1939, cc. 178, 253.)

Editor's Note.—By the 1925 amendment the words "and concerning the selection of members of the board of trustees" were stricken from the second paragraph.

The 1931 amendment struck out the words "Cherokee Indian State Normal School, Pembroke" formerly appearing at the end of the first paragraph.

The first 1939 amendment changed the name of "Fayetteville State Normal School" to "Fayetteville State Teachers College," and the second 1939 amendment changed the name of "Elizabeth City State Normal School" to "Elizabeth City State Teachers College."

§ 116-103. **Trustees for negro State teachers colleges.**—The Governor shall appoint a board of nine trustees for each of the following institutions: The Elizabeth City State Teachers College at Elizabeth City; the Fayetteville State Teachers College at Fayetteville; and the Winston-Salem Teachers College at Winston-Salem. Four trustees for each college shall be appointed by the Governor within thirty days after March 10, 1925; the other five members shall be appointed within six months after March 10, 1925. At the time of making such appointment the Governor shall name which of the present boards are to be succeeded by his appointees. The Governor shall fill all vacancies. He shall transmit to the Senate at the next session of the General Assembly following his appointment the names of persons appointed by him for confirmation. The terms of office of the members of each board shall be four years and until their successors are appointed and qualified. The Governor shall have the power to remove any member of any of the boards whenever in his opinion it is to the best interest of

the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1925, c. 306, ss. 9, 13, 14.)

§ 116-104. Four-year courses; granting of degrees.—The State Board of Education is hereby authorized and empowered to establish in the Elizabeth City State Teachers College, the Fayetteville State Teachers College, and the Winston-Salem Teachers College, four-year courses in the field of elementary education to train elementary teachers qualified to obtain grammar grade and primary class A certificates, and to train elementary school principals for rural and city schools.

The degrees to be granted by the said institutions for a completion of the four-year courses of study shall be subject to §§ 115-322 to 115-324, which give the State Board of Education authority to regulate degrees. (1925 (Pr.), c. 170; 1939, cc. 178, 253.)

ARTICLE 10.

State School for the Blind and the Deaf in Raleigh.

§ 116-105. Incorporation and management.—The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, shall be a corporation under the name and style of the State School for the Blind and the Deaf, and shall be under the management of a board of directors and superintendent. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872.)

Cited in *Hass v. Hass*, 195 N. C. 734, 143 S. E. 541 (1928).

§ 116-106. Directors; appointment; terms; vacancies.—There shall be eleven (11) directors of the School for the Blind and Deaf at Raleigh, to be appointed by the Governor. Within thirty days from March 10, 1925, the Governor shall appoint six (6) directors and within six months from March 10, 1925, the Governor shall appoint five (5) directors. At the time of making the appointment the Governor shall designate which of the present members of the board are to be succeeded by his nominees and appointees. The terms of the directors shall be four years from their appointment and until their successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of any of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; Rev., s. 4188; C. S., s. 5873; 1925, c. 306, ss. 10, 13, 14.)

Editor's Note. — The 1925 amendment decreased the term of directors from six to four years. There were formerly three classes, appointed at intervals of two years. All are now appointed in the same year.

§ 116-107. President, executive committee, and other officials; election, terms, and salaries.—The board of directors shall organize by electing one of its number president and three an executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent, who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and a physician whose terms of office shall be for two years; and such other officers, agents, and teachers as shall be deemed necessary. The compensation for officers and agents and teachers, mentioned in this section, shall be fixed by the board, and shall not be increased nor reduced during their term of service. The board shall have power to erect any buildings necessary, make improvements, and in general do all matters and things which

may be beneficial to the good government of the institution, and to this end may make bylaws for the government of the same. The board of directors may term the head teacher of the white department "principal," and the chief officer of the colored department "principal of the colored department." (1881, c. 211, s. 3; Code, s. 2229; Rev., s. 4189; 1917, c. 35, ss. 1, 2; C. S., s. 5874.)

§ 116-108. Meetings of the board and compensation of the members.—The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall be paid traveling expenses incurred in the discharge of their official duties, and shall also be paid the same per diem on account of attending meetings of the board as is provided for boards of other State institutions, from time to time, in the biennial appropriation acts. (1881, c. 211, s. 4; Code, s. 2230; Rev., s. 4190; C. S., s. 5875; 1943, c. 608, s. 1.)

Editor's Note.—The 1943 amendment rewrote the section and added the provision for payment of per diem compensation.

§ 116-109. Admission of pupils; how admission obtained.—The board of directors shall, on application, receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for colored all colored deaf-mutes and blind children, residents of this State, not of confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that pupils may be admitted to said institution who are not within the age limits above set forth, in cases in which the board of directors find that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the board of directors is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, sums of money for the use of out of State facilities for any student who, because of peculiar conditions of race or disability, cannot be properly educated at the School in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507.)

Editor's Note.—The 1947 amendment rewrote this section. The 1949 amendment added the last proviso. that the word "of" should appear before the word "sums" in line three of the last proviso.

The General Assembly probably intended

§ 116-110. Admission of curable blind.—The directors of the institution for the blind, in the city of Raleigh, shall set apart space in said institution for the use of the curable blind who, by reason of poverty, are unable to pay for treatment. It shall be the duty of the directors of the institution for the blind in Raleigh to admit into such institution, from time to time, such of the blind of the State as they may deem to be curable. (1895, c. 461; Rev., s. 4192; C. S., s. 5877.)

§ 116-111. Admission of pupils from other states.—The board may, on such terms as they deem proper, admit as pupils persons of like infirmity from any other state: Provided, such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878.)

§ 116-112. Board may confer degrees.—The board may, upon the recommendation of the superintendent and faculty, confer such degree or marks of literary distinction as may be thought best to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879.)

§ 116-113. Election of officers.—The board of directors shall, on the

second Monday in May, one thousand nine hundred and five, and every three years thereafter, elect an officer to be styled superintendent. They may elect all officers and teachers at the same time. The terms of office of the superintendent and the steward shall begin June first, and the terms of all other officers and teachers shall begin September first, and for the periods named in this article. The superintendent shall be a man of good moral character, and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position. He shall have charge of the institution in all its departments, and shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (1881, c. 211, s. 8; Code, s. 2234; 1889, c. 539; 1893, c. 137; 1901, c. 707, s. 2; Rev., s. 4195; 1917, c. 35, s. 1; C. S., s. 5880; 1943, c. 425.)

Editor's Note. — The 1943 amendment struck out the words "and shall have experience as a teacher in the Deaf, Dumb, and Blind School of North Carolina, or some similar institution, for the term of two or more years" formerly appearing in

this section, and inserted in lieu thereof the following: "and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position."

§ 116-114. State Treasurer is ex officio treasurer of institution. — The State Treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881.)

§ 116-115. Reports of board to Governor. — The board shall make a report to the Governor on the first of January next before the regular meeting of the General Assembly, showing the condition of the institution in its various departments, and shall give any information the Governor shall desire from time to time. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5882.)

§ 116-116. Removal of officers. — The board shall have power to remove any officer, employee, or teacher for gross immorality, willful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved, and entered on record. The board shall fill all vacancies which may occur from any cause. (1881, c. 211, s. 10; Code, s. 2236; Rev., s. 4197; C. S., s. 5883.)

§ 116-117. Employees. — The superintendent, subject to the control of the board, shall have power to employ all employees and fix their compensation, and to discharge them at pleasure. (1881, c. 211, s. 11; Code, s. 2237; Rev., s. 4198; 1917, c. 35, s. 1; C. S., s. 5884.)

§ 116-118. When clothing, etc., for pupils paid for by county. — Where it shall appear to the satisfaction of the superintendent of public welfare and the chairman of the board of county commissioners that the parents of any deaf or blind child of the county are then unable to provide such child with clothing and/or traveling expenses to and from the State School for the Blind and the Deaf, and the North Carolina School for the Deaf, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses provided for herein, then, upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued, its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child; provided, that the amount, in no case, shall exceed forty-five dollars (\$45.00) per annum for each child, in addition to such amounts as may be necessary to defray the actual traveling expenses to and from

said institution. For such amount so furnished, the parents, or other person upon whom such child is, or may be, legally dependent, and such child, shall be and remain liable for the payment thereof, together with 5% per annum interest thereon from the date of each payment by the county. At any time after any of such payments, in the discretion of the board of commissioners, or any succeeding board, a suit may be instituted in some court of competent jurisdiction in said county, or in any other county in the State according to the venue now or hereafter fixed by law for the recovery of the same, which suit shall be prosecuted by the person who may now or hereafter perform the duties of county attorney, and the parents of such child shall be liable therefor jointly and severally, and all other persons who are made liable therefor herein shall be liable severally for such amounts and interest and the costs of suit. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181.)

§ 116-119. **Title to farm vested in directors.**—The farm of one hundred acres, now held by the said School, west of the city of Raleigh, shall be held in fee simple by the board of directors of said institution, to be improved, or used, or disposed of, or exchanged for lands more convenient, as the best interests of the said institution, in its judgment, may require or demand. (1901, c. 707, s. 3; Rev., s. 4201; C. S., s. 5886.)

ARTICLE 11.

North Carolina School for the Deaf at Morganton.

§ 116-120. **Incorporation and location.**—There shall be maintained a school for the white deaf children of the State which shall be a corporation under the corporate name of the North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina School for the Deaf shall be classed and defined as an educational institution. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888.)

§ 116-121. **Directors; terms; vacancies.**—The North Carolina School for the Deaf at Morganton shall be under the control and management of a board of directors consisting of seven (7) members. Within thirty days from March 10, 1925, the Governor shall appoint four directors, and within six months from March 10, 1925, the Governor shall appoint three directors. At the time of making such appointment the Governor shall designate which of the present board are to be succeeded by his appointees. The terms of the said trustees shall be four years from the date of their appointment and until successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1891, c. 399, s. 2; 1901, c. 210; Rev., s. 4203; C. S., s. 5889; 1925, c. 306, ss. 11, 13, 14.)

Editor's Note. — The 1925 amendment decreased the term of directors from six to four years. There were formerly three classes, appointed at intervals of two years.

All are now appointed in the same year.

Filling Vacancy by Governor. — See *State v. Bristol*, 122 N. C. 245, 30 S. E. 1 (1898).

§ 116-122. **Organization of board; other officials; salaries.**—The board of directors shall organize by appointing one of its number president and three an executive committee, who shall hold office for two years; they shall elect a superintendent, who shall be ex officio secretary of the board and whose term of office shall be three years, and such other officers, teachers, and agents as shall be deemed necessary. The compensation for officers, teachers, and agents shall

be fixed by the board, and shall not be increased or reduced during their term of service. (1893, c. 131, ss. 1, 2; Rev., s. 4206; 1915, c. 14; C. S., s. 5890.)

§ 116-123. Superintendent.—The superintendent shall be a teacher of knowledge, skill, and ability in his profession and experience in the management and instruction of the deaf. He shall possess good executive ability and shall be the chief executive officer of the institution. He shall devote his whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits as provided for in this article, and under the supervision of the board. The board shall elect all teachers and subordinate officers by and with the consent and recommendation of the superintendent. (1893, c. 131, ss. 1, 2; Rev., s. 4206; 1915, c. 14; C. S., s. 5891.)

§ 116-124. Pupils admitted; education.—The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all white deaf children resident of the State not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of eight and twenty-three years: Provided, that the board of directors may admit students under the age of eight years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who have been bona fide citizens of North Carolina for a period of two years shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting. (1891, c. 399, ss. 7, 8; Rev., s. 4204; 1907, c. 929; 1915, c. 14; C. S., s. 5892; 1941, c. 123.)

Editor's Note.—The 1941 amendment added the proviso at the end of the first sentence.

§ 116-124.1. Free textbooks and State purchase and rental system.—The North Carolina School for the Deaf, at Morganton, North Carolina, shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in said State. (1943, c. 205.)

§ 116-125. Powers of board.—The board shall have power to make such bylaws, rules, and regulations, not inconsistent with the laws of the State, as may be necessary for the proper management of said school and its officers; and shall conduct the school in such way, as far as practicable, as to make it self-sustaining. The board is further authorized to make such arrangements with the board of directors of the State Hospital at Morganton as may be agreed upon to promote convenience and economy for joint water supply and lighting arrangements. (1891, c. 399, ss. 8, 9, 10; Rev., s. 4205; C. S., s. 5893.)

ARTICLE 12.

The Caswell Training School.

§ 116-126. Incorporation and general corporate powers.—The Caswell Training School, formerly established as the North Carolina School for the

Feeble-Minded, by chapter eighty-seven of the Public Laws of nineteen hundred and eleven, shall be and remain a corporation invested with all property and rights of property heretofore held under the former name, and under this name may acquire and hold all such property as may be devised, bequeathed, or conveyed to it, and may use all the authority, privileges, and possessions that said corporation exercised under the former title and name, and shall be subject to all legal liability outstanding against it under the former title and name. (1915, c. 266, s. 1; C. S., s. 5894.)

Cited in *Moyle v. Hopkins*, 222 N. C. 33, 21 S. E. (2d) 826 (1942).

§ 116-127. Objects of the School.—The purpose and aim of the Caswell Training School is to segregate, care for, train and educate, as their mentality will permit, the State's mental defectives; to disseminate knowledge concerning the extent, nature, and menace of mental deficiency; to suggest and initiate methods for its control, reduction, and ultimate eradication from our people; and to maintain an extension bureau for instructing the public in the care of the mental defectives who remain in their homes and for the after-care of discharged inmates of the institution; and to create and maintain a psychological clinic for the study and observation of mental defectives charged with crime, and to give expert advice in all cases of mental defect. (1919, c. 224, s. 1; C. S., s. 5895.)

Cited in *Moyle v. Hopkins*, 222 N. C. 33, 21 S. E. (2d) 826 (1942).

§ 116-128. State Treasurer to keep accounts and pay out moneys.—The State Treasurer shall keep full accounts of said school and shall pay out all moneys upon the warrant of the superintendent thereof, countersigned by two members of the board of directors under such rules and regulations as the board of directors may establish. (1911, c. 87, s. 8; 1913, c. 191, s. 2; 1919, c. 295; C. S., s. 5897.)

§ 116-129. Persons admitted; county welfare officer and judge of the juvenile court or clerk of the superior court to approve.—There shall be received into the Caswell Training School, subject to such rules and regulations as the board of directors may adopt, feeble-minded and mentally defective persons of any age when in the judgment of the officer of public welfare and the board of directors of said institution it is deemed advisable. All applications for admission must be approved by the local county welfare officer and the judge of the juvenile court or the clerk of the court of the county wherein said applicant resides. (1911, c. 87, s. 3; 1915, c. 266, s. 2; 1919, c. 224, s. 2; C. S., s. 5898; 1923, c. 34.)

Editor's Note.—Prior to the 1923 amendment, there were age and other restrictions on admission, and the approval now required by the second sentence was to be given by the board of county commissioners.

§ 116-130. Persons authorized to make application for minors.—The application for the admission of a child below the age of twenty-one years shall be made, first, by the father, if the father and mother are living together; second, by the one having custody of the child, if the father and mother are not living together; third, by a guardian duly appointed; fourth, by the superintendent of any county home, or by the person having the management of any orphanage, association, charity, society, children's home workers, ministers, teachers, or physicians, or other institutions where children are cared for. Under items third and fourth, consent of parents, if living, is not required. (1915, c. 266, s. 3; C. S., s. 5899.)

§ 116-131. Procedure for admission of adult.—1. Affidavit.—In case of mentally defective persons who are twenty-one years or over, any responsible

person residing in the county may file in the office of the clerk of the superior court of the county an affidavit stating that some person of the county is not being properly maintained or cared for by those having such person in charge; that such person is feeble-minded, and is over twenty-one and is in good bodily health, and is not helpless, is not afflicted with any chronic or contagious disease; that said person is a legal resident of the State and county where the application is filed, together with such other statements as may be necessary to show that he or she is a proper person to be admitted to such institution, and that his or her admission thereto would be in conformity to the rules and regulations established by the board of directors for the admission and care of such person.

2. **Summons upon Affidavit.**—Upon the filing of the affidavit in the office of the clerk of the superior court by the proper person, the clerk shall issue a summons to such person named in the application or petition, requiring him or her to be and appear before said court, or the judge thereof, at some time to be fixed by the clerk, not more than ten days thereafter.

3. **Action upon Affidavit.**—The judge or clerk shall, as soon as convenient, pass upon said application or petition, and it shall be the duty of said court to examine such witnesses as may be necessary, among whom shall be at least one physician, to prove the truth or falsity of the statements in said application or petition.

4. **Order of Commitment.**—If the court finds that each and all of the allegations contained in said application or petition are true, and that said person is a proper person to be cared for in said institution, it shall be its duty to make an order committing the care and custody of said person to said institution.

5. **Transcript to Superintendent; Costs Paid by County.**—It shall be the duty of the clerk of said court to make a certified copy of said application or petition and the finding and judgment of said court, and transmit the same, together with a statement of such facts as can be ascertained concerning the personal and family history of such person, to the superintendent of the institution at Kinston, North Carolina. The costs of said proceedings shall be allowed and paid by the board of county commissioners of the county. (1915, c. 266, s. 4; C. S., s. 5900.)

§ 116-132. Decision by superintendent and notice to clerk.—Upon receipt of such order of commitment, it shall be the duty of the superintendent of the institution at once to consider the application and to determine whether or not said person shall be admitted to the institution, and to notify the clerk of the court of his decision, and if there is room for any more inmates, or as soon thereafter as there shall be room in the institution, to notify the clerk that such person will be received in the institution. With such notice the superintendent shall send a list of such clothing as shall be prescribed by the board of trustees of the institution, and a blank form of certificate of health and freedom of exposure to contagious disease at such time. In case the parents or custodian of such person shall be financially unable to furnish the clothing as required, the clerk shall procure the clothing at a cost not to exceed twenty dollars, and the payment for same shall be made out of the county treasury by the board of county commissioners upon the certificate of the clerk of the court. (1915, c. 266, s. 5; C. S., s. 5901.)

§ 116-133. Conveyance to and from school upon discharge.—Upon receiving notice that such person can be admitted to the institution, the clerk shall order the parents, custodian, or applicant to convey such person to the institution without expense to the institution or the county. In case such parents, custodian, or applicant is financially unable to bear such expense, the clerk shall cause the person to be conveyed to the institution in the same manner and in accordance with the same forms as are now provided by law for the transfer of patients to insane hospitals, so far as they are applicable. And when any child or person, who is or has been an inmate of the institution, is dismissed or discharged from said institution in accordance with the rules and regulations of said institution, the parent or guardian of such child or person shall come, or send some responsible person,

to receive said child or person and convey same to his or her legal residence, without cost to the institution; and in case the parent or guardian of said child or person is wholly unable to bear such expense, then the commissioners of said county shall allow such expense. (1915, c. 266, s. 6; C. S., s. 5902.)

§ 116-134. Clothing and conveyance of children at cost of county.—In case the parents of a child below the age of twenty-one are wholly unable to bear the expense of furnishing the clothing of said child as required by the rules and regulations of the board of directors of said school, or of furnishing the money for transportation of such child to the school, it shall be the duty of the county from which the child is sent to bear such cost, in the manner provided for adults in the other sections of this article. (1915, c. 266, s. 7.)

§ 116-135. Expenditure of sums by superintendent of Caswell Training School for student work authorized.—The superintendent of the Caswell Training School is hereby authorized and empowered in his discretion, when funds are available, to pay children of the School for work done at the Caswell Training School: Provided, that the amount of money so expended shall not exceed fifteen hundred dollars (\$1,500.00) in any one fiscal year. (1939, c. 278.)

§ 116-136. Discharge of pupils.—Any pupil of said School may be discharged or returned to his or her parents or guardian when in the judgment of the directors it will not be beneficial to such pupil, or will not be for the best interests of said School, to retain the pupil therein. (1915, c. 266, s. 9; C. S., s. 5904.)

§ 116-137. Certain acts prohibited for protection of inmates.—It shall be unlawful:

(a) For any person to advise, or solicit, or to offer to advise, or solicit, any inmate of said School to escape therefrom;

(b) For any person to transport, or to offer to transport, in automobile or other conveyance any inmate of said School to or from any place: Provided, this shall not apply to the superintendent and teachers of said School, or to employees or any other person acting under the superintendent and teachers thereof;

(c) For any person to engage in, or to offer to engage in, prostitution with any inmate of said School;

(d) For any person to receive, or to offer to receive, any inmate of said School into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said School to engage in prostitution;

(e) For any person to conceal an escaped inmate of said School, or to furnish clothing to an escaped inmate thereof to enable him or her to conceal his or her identity.

The term "inmate" as used in this section shall be construed to include any and all boys and girls, men or women, committed to, or received into, said Caswell Training School under the provisions of the law made and provided for the receiving and committing of persons to said Caswell Training School; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse.

Any person who shall knowingly and willfully violate subsections (a) and (b) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; that any person who shall knowingly and willfully violate subsections (c), (d) and (e) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1937, c. 235.)

ARTICLE 13.

Colored Orphanage of North Carolina.

§ 116-138. **Creation; powers.**—The corporation created by chapter forty-seven, Private Laws of one thousand eight hundred and eighty-seven, is hereby continued as a body corporate for a period of sixty years from March 8, 1927, under the name and style of "The Colored Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars, to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract and be contracted with, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1.)

§ 116-139. **Directors; selection, self-perpetuation, management of corporation.**—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek, Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the board of directors of said "The Colored Orphanage of North Carolina." The Governor of North Carolina shall appoint five white citizens of Granville County as members of said board of directors, and the thirteen so named shall constitute the board of directors of said corporation. Said board of directors shall organize by the election of a president and secretary, shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2.)

§ 116-140. **Board of trustees; appropriations; treasurer; board of audit.**—The five members of said board of directors so appointed by the Governor shall also serve as a board of trustees of said "The Colored Orphanage of North Carolina." The said board of trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said "The Colored Orphanage of North Carolina" shall be under the control of the board of trustees, and said appropriations shall be expended under their supervision and direction. The board of trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars per year for his services and members of the board of audit a salary not to exceed one hundred and fifty dollars per year. The treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the board of trustees may require, the annual premium to be paid out of the funds of the said Orphanage. (1927, c. 162, s. 3.)

§ 116-141. **Training of orphans.**—The said corporation shall receive, train and care for such colored orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4.)

§ 116-142. **Control over orphans.**—The said corporation shall have power to secure the control of such orphans by the written consent of those nearest akin to them or of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been entered and received by it. The board of directors shall make all necessary rules and regulations for the reception and discharge of children from said Orphanage. (1927, c. 162, s. 5.)

ARTICLE 13A.

Negro Training School for Feeble-Minded Children.

§ 116-142.1. **Creation; powers.**—An institution, to be known and designated as “The Negro Training School for Feeble-Minded Children,” is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 459, s. 1.)

§ 116-142.2. **School controlled by North Carolina Hospitals Board of Control.**—The said institution shall be under the control of the North Carolina Hospitals Board of Control, and whenever the words, “board,” “directors” or “board of directors” are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina Hospitals Board of Control, and said Board shall exercise the same powers and perform the same duties with respect to the Negro Training School for Feeble-Minded Children as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1945, c. 459, s. 2.)

§ 116-142.3. **Acquisition of real estate, erection of buildings, etc.**—The board or directors, with the approval of the Governor and the Council of State, is authorized to secure by gift or purchase suitable real estate within the State at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased or any commitments made for the erection or permanent improvements of any buildings involving the use of State funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the General Assembly; but this prohibition shall not prevent the directors from purchasing or improving real estate from funds that may be donated for the purpose. However, the board is authorized and directed to have prepared the necessary plans and specifications for such buildings as may be deemed necessary to establish said School, incurring the necessary expense of employing engineers and architects, which amount is hereby authorized to be paid out of the contingency and emergency fund of the State. (1945, c. 459, s. 3.)

§ 116-142.4. **Temporary quarters.**—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary use of any State owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of the Negro Training School for Feeble-Minded Children upon such terms as may be mutually agreed upon. (1945, c. 459, s. 4.)

§ 116-142.5. **Authority and powers of board; classification of inmates.**—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the

inmates and keep the different classes in separate wards or divisions, so as to produce the best results in their rehabilitation. (1945, c. 459, s. 5.)

§ **116-142.6. Superintendent.**—The board of directors shall appoint a superintendent of the institution, who shall be a person of professional training and experience in the care and treatment of feeble-minded persons, and may fix the compensation of the superintendent, subject to the approval of the Budget Bureau, and may discharge the superintendent at any time for cause. (1945, c. 459, s. 6.)

§ **116-142.7. Aims of School; application for admission.**—The purpose and aim of the Negro Training School for Feeble-Minded Children is to segregate, care for, train, and educate, as their mentality will permit, the mental defectives among the negro children of the State; to disseminate knowledge concerning the extent, nature, and menace of mental deficiency and initiate methods for its control, reduction, and ultimate eradication and to that end, subject to such rules and regulations as the board of directors may adopt, there shall be received into said School feeble-minded and mentally defective children of the negro race under the age of twenty-one years when, in the judgment of the board of directors, it is deemed advisable. Application for the admission of a child must be made by the father if the mother and father are living together, and if not, by the one having custody, or by a duly appointed guardian or by the superintendent of any county home or by person having management of any orphanage, association, society, children's home, or other institution for the care of children to which the custody of such child has been committed, in which event the consent of the parents shall not be required. The applications for admission must be approved by the superintendent of public welfare and the judge of the juvenile court of the county wherein the applicant resides. (1945, c. 459, s. 7.)

§ **116-142.8. Regulation of admission; financial ability of parent or guardian.**—The board of directors is hereby authorized and empowered to promulgate rules, regulations, and conditions of admission of pupils to the School and in cases in which the parents or guardian of a child are financially able, shall require such parents or guardian to transport the child to the School and make such contribution toward maintenance as may to the board of directors seem proper and just. (1945, c. 459, s. 8.)

§ **116-142.9. Discharge of inmate.**—Any child entered into the School may be discharged therefrom or returned to his or her parents or guardian when, in the judgment of the directors, it will not be beneficial to such pupil or to the best interest of the School to be retained longer therein. (1945, c. 459, s. 9.)

§ **116-142.10. Offenses relating to inmates.**—For the protection of the pupils residing in the School, it shall be unlawful:

(a) For any person to advise, or solicit, or to offer to advise or solicit, any inmate of said School to escape therefrom;

(b) For any person to transport, or to offer to transport, in automobile or other conveyances any inmate of said School to or from any place: Provided, this shall not apply to the superintendent and teachers of said School, or to employees or any other person acting under the superintendent and teachers thereof;

(c) For any person to engage in, or to offer to engage in, prostitution with any inmate of said School;

(d) For any person to receive, or to offer to receive, any inmate of said School into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said School to engage in prostitution;

(e) For any person to conceal an escaped inmate of said School, or to furnish

clothing to an escaped inmate thereof to enable him or her to conceal his or her identity.

The term "inmate" as used in this section shall be construed to include any and all boys and girls, committed to, or received into, said Negro Training School for Feeble-Minded Children under the provisions of the law made and provided for the receiving and committing of persons to said School; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse.

Any person who shall knowingly and willfully violate subsections (a) and (b) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; any person who shall knowingly and willfully violate subsections (c), (d) and (e) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1945, c. 459, s. 10.)

ARTICLE 14.

General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. State-supported institutions required to charge tuition fees.—The trustees of the University of North Carolina, including the University of North Carolina, the State College of Agriculture and Engineering and the Woman's College of the University of North Carolina, and the trustees of the East Carolina Teachers College, the Western Carolina Teachers College, the Appalachian State Teachers College, the Negro Agricultural and Technical College, the Winston-Salem Teachers College, the Fayetteville State Teachers College, the Elizabeth City State Teachers College, the North Carolina College for Negroes and the Pembroke State College for Indians, are hereby authorized and directed to fix the tuition fees for their several State-supported institutions, each board of trustees acting separately for their respective institutions, in such amount or amounts as they may deem best, taking into consideration the nature of each department and institution and the cost of equipment and maintaining the same; and are further instructed to charge and collect from each student, at the beginning of each semester, tuition fees and an amount sufficient to pay room rent, servants' hire and other expenses for the term. Indigent cripples are exempt from the provisions of this article.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished, except such students as are physically disabled, and are so certified to be by the Vocational Rehabilitation Division of the State Board for Vocational Education, who shall be entitled to free tuition in any of the institutions named in this article. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586.)

Editor's Note. — The 1949 amendment fees" after the word "tuition" in line two inserted the words "and required academic of the second paragraph.

§ 116-144. Higher fees from nonresidents may be charged.—The provisions of this article shall not be construed to prohibit the several boards of trustees from charging nonresident students tuition in excess of that charged resident students. (1933, c. 320, s. 3.)

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§§ 116-145 to 116-148.1: Repealed by Session Laws 1951, c. 1160, s. 1.

Cross Reference. — See note under § 116-149.

§ 116-149. **Definitions.**—(a) As used in this article, “veteran” means a person who served as a member of the armed forces of the United States at any time between April 6, 1917, the date of the declaration of war with respect to the war known as World War I, and July 2, 1921, or between December 7, 1941, the date of the declaration of war with respect to the war known as World War II, and December 31, 1946, and who was separated from the armed forces under conditions other than dishonorable.

(b) As used in this article, “eligible child” means:

(1) A child of a veteran who was a legal resident of North Carolina at the time of said veteran’s entrance into the armed forces, or

(2) A veteran’s child who was born in North Carolina and has lived in North Carolina continuously since birth. (1951, c. 1160, s. 1.)

Editor’s Note. — The 1951 amendment rewrote this article which formerly consisted of §§ 116-145 through 116-148.1. Section 2 of the amendatory act provided: “This act shall not have the effect of revoking or otherwise affecting any scholarship of tuition and fees or award of free room and board heretofore made pursuant to any law in force at the time such scholarship or award was granted, and

such scholarships and awards shall continue in full force for the period for which granted.”

Former §§ 116-145 through 116-148.1 were derived from Public Laws 1931, c. 370; Public Laws 1937, c. 242; Public Laws 1939, cc. 54, 165; Public Laws 1941, cc. 154, 239, 302; and Session Laws 1943, c. 534.

§ 116-150. **Scholarship.** — A scholarship granted pursuant to this article shall consist of free tuition, room and a reasonable board allowance in any State educational institution and such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected.

Every applicant for benefits pursuant to this section shall furnish a statement from the United States Veterans Administration stating such facts as the Administration records disclose showing that the applicant comes within the provisions of this article.

A scholarship granted pursuant to this article shall not extend for a longer period than four academic years with respect to any one child, which years, however, need not be consecutive. (1951, c. 1160, s. 1.)

§ 116-151. **Classes of eligible children entitled to scholarships.**—An eligible child shall be entitled to and granted a scholarship as provided by this article if such child falls within the provisions of any one of the three classes described below, subject to any limitations set out therein:

(1) Class I: Any eligible child whose father was killed in action or died from wounds or other causes while a member of the armed forces during either period of military service described in § 116-149, or whose father has died as a direct result of injuries, wounds, or other illness contracted during said period of service.

(2) Class II: Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death, was suffering from, a service-connected disability of thirty per cent (30%) or more as rated by the United States Veterans Administration; provided, that benefits pursuant to § 116-150

for this class of eligible children shall be limited to not more than ten eligible children in any one school year; and provided further, that if more than ten such eligible children apply for such benefits in any one school year the North Carolina Veterans Commission shall designate the ten children who shall receive such benefits. A statutory award for tuberculosis pulmonary arrested shall be considered as meeting the criteria of disability as set forth with respect to this class.

(3) Class III: Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred per cent (100%) disability, as rated by the United States Veterans Administration, and drawing compensation therefor whether service-connected or otherwise; provided, that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than fifteen children in any one school year, and, provided further, that if more than fifteen children of this class apply for such benefits in any one school year, the North Carolina Veterans Commission shall designate the fifteen children who shall receive such benefits. (1951, c. 1160, s. 1.)

§ 116-152. Institution reimbursed for free room rent and board.—Any State educational institution furnishing free room rent and board allowance pursuant to this article shall be reimbursed therefor from the State Contingency and Emergency Fund at such rate as the Director of the Budget may determine to be reasonable. (1951, c. 1160, s. 1.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

January 31, 1952

I, Harry McMullan, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

HARRY McMULLAN,
Attorney General of North Carolina

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